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IN THE
Supreme Court of the United States

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

On Exceptions to Report of Special Master on Motions for Summary Judgment

EXCEPTIONS TO REPORT OF SPECIAL MASTER AND BRIEF IN SUPPORT FOR PLAINTIFF STATE OF ALASKA

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EXCEPTIONS TO REPORT OF SPECIAL MASTER ON MOTIONS FOR PARTIAL SUMMARY JUDGMENT

Plaintiff State of Alaska respectfully submits the following exceptions to the Report of the Special Master on Six Motions for Partial Summary Judgment and One Motion for Confirmation of a Disclaimer of Title (the "Report"):

1. The Court should decline to adopt the Special Master's recommendation that the United States be granted summary judgment on Count IV of the Amended Complaint. *See* Report at 227-276. Instead, the Court should grant summary judgment to Alaska on Count IV because, *inter alia*, the plain language of Section 6(e) of the Alaska Statehood Act does not express the requisite unambiguous intent of Congress to reserve for the United States submerged lands within the boundaries of the Glacier Bay National Monument, but rather expressly applies only to a narrow subset of other lands that are indisputably not at issue here.

2. The Court should decline to adopt the Special Master's recommendation that the United States be granted summary judgment on Count I of the Amended Complaint. *See* Report at 9-137. Instead, the Court should grant summary judgment to Alaska on Count I because the undisputed historical record demonstrates that the United States continuously exercised sovereignty over the waters of the Alexander Archipelago with the acquiescence of foreign nations, and the Nation's vital interests support a finding of historic waters status.

3. The Court should decline to adopt the Special Master's recommendation that the United States be granted summary judgment on Count II of the Amended Complaint. *See* Report at 138-226. Instead, the Court should grant summary judgment to Alaska on Count II as to the areas referred

to as North Bay and South Bay because the undisputed record demonstrates that the areas qualify as juridical bays under Article 7 of the Convention on the Territorial Sea and Contiguous Zone, and the assimilation principles adopted and applied by this Court in *United States* v. *Maine*, 469 U.S. 504 (1986).

Alaska does not take exception to, and urges the Court to adopt, the Special Master's separate recommendation that the Court confirm the United States' disclaimer of title relating to Count III of the Amended Complaint and dismiss Count III for lack of jurisdiction. *See* Report at 276-294.

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BRIEF IN SUPPORT OF ALASKA'S EXCEPTIONS

JURISDICTION

This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1251(b)(2).

STATUTORY PROVISIONS INVOLVED

Pertinent statutes are set forth in the appendix to this brief.

INTRODUCTION

This case is "one of the largest quiet title actions ever litigated." Report at 2. It involves submerged lands within the Alexander Archipelago—an area of Southeast Alaska more than 500 miles long and 100 miles wide containing over 1000 islands. *Id.* The waters of the Archipelago are central to the region's history, economy and society, and Alaska now seeks to confirm that the State, and not the United States, possesses title to the lands underlying those navigable waters.

In recommending for the United States, the Special Master made critical errors of law that this Court—which considers the matter *de novo*—should not endorse. Most fundamentally, the Master committed a basic error of statutory interpretation in concluding that Alaska does not have title to the submerged lands underlying the area of Glacier Bay. Contrary to the recommendation, the plain language of the Alaska Statehood Act does not remotely manifest Congress' intent to retain such lands for the Federal government at statehood, much less the unequivocal intent required to upset Alaska's presumptive sovereignty over navigable waters within her boundaries. Moreover, contrary to the Master's recommendations on the other independent issues not already conceded by the United States, the remaining waters of the Archipelago are inland waters under this Court's precedents defining both historic waters and juridical bays.

Accordingly, the Court should grant summary judgment to Alaska on Counts I, II and IV of the Amended Complaint, and confirm the United States' disclaimer on Count III.

STATEMENT OF THE CASE

A. The Alexander Archipelago.

Southeast Alaska consists of a narrow strip of mountainous mainland and the Archipelago. The famed naturalist John Muir, who explored the area in 1879, described the waters of the Archipelago as "inland waters that are about as waveless as rivers and lakes." Ex. AK-1 at 13.[1] As he noted:

> In general, the island-bound channels are like rivers, not only in separate reaches as seen from the deck of a vessel, but continuously so for hundreds of miles in the case of the longest of them. The tide-currents, the fresh driftwood, the inflowing streams, and the luxuriant foliage of the out-leaning trees on the shores make this resemblance all the more complete. The largest islands look like part of the mainland in any view to be had of them from the ship * * *. [*Id.* at 17.]

As another explorer noted in 1873, the waters are "a labyrinth of straits, sounds and inlets * * *—a network of waters resembling inland lakes, majestic streams and small rivers—through which only the native and the most experienced trader know how to find their way." Ex. AK-2 at 26.

Europeans encountered Southeast Alaska in 1741, when the Russian Aleksei Chirikof sighted what would become Prince of Wales Island. After anchoring off the seaward side of Kruzof Island, he sent ship's mate Abram Dementief and a crew of ten around a protrusion of land. The men were never seen again. *See* Hubert Howe Bancroft, *History of Alaska 1730-1885*, at 68-71 (1886). The line these men crossed to meet their fate forms a sheltering boundary that has defined Southeast Alaska ever since. The closely-knit islands of the Archipelago form a barrier against the open sea and create a

[1] Exhibit references are to the exhibits to the parties' motions for summary judgment, which are lodged with the Court. Selected exhibits are also reproduced in the appendix ("App.") to this brief.

maze of protected marine water—an ideal environment for the fur-bearing marine animals that attracted the Russians, and the salmon and other fish that are the foundation of life and commerce in the area. For the indigenous inhabitants "[t]he numerous interconnected waterways of the region were the travel routes; a couple of trails connected the northern end of the inland waterway system with the Yukon River, but otherwise land travel was virtually unknown." Ex. AK-5. Indeed, the name of the major native group in Southeast—the Tlingits—means "tidal people." Ex. AK-6.

The marine waters of Southeast Alaska continue to be vitally important to the Alaskans who live there. Fishing provides the economic base for many Southeast towns. The important cruise ship industry is also obviously linked to the water and, in particular, the closely surrounding landscape. *See* Ex. AK-7. The towns of Southeast Alaska, including the State's capital, Juneau, generally are accessible only by boat or plane. The sounds, straits, canals, channels, and narrows of Southeast Alaska—known collectively and tellingly as the Inside Passage—still form its "roads." The state ferry system that travels these waters is aptly called the Alaska Marine Highway. Ex. AK-3 at 3; Ex. AK-4 at 6, 28; Ex. AK-7 at 1.

The waters of the Inside Passage are the historical, cultural, and commercial lifeblood of the region. They define Southeast Alaska. The State brought this original action to confirm that the land underlying these waters is in fact part of Alaska.

B. Alaska's Claims.

The Constitution reserves the submerged lands underlying navigable waters to new States to ensure that they join the Union on an "equal footing" with the original thirteen. *Pollard's Lessee* v. *Hagan*, 44 U.S. (3 How.) 212, 229-230 (1845). Title to these lands is "an inseparable attribute of the equal sovereignty guaranteed to [a new State] upon admission." *United States* v. *Louisiana*, 363 U.S. 1, 16 (1960). Implementing this doctrine, the Submerged Lands Act ("SLA") confirms Alaska's title to submerged lands three

nautical (geographical) miles seaward from the "coast line." 43 U.S.C. § 1312. The coast line is defined as both (1) "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea" and (2) "the line marking the seaward limit of inland waters." *Id.* § 1301(c). In this action, the State of Alaska seeks to confirm its title to three separate areas of lands located within the Archipelago, based in part on the "inland" status of the waters above them.

1. Glacier Bay. In Count IV of the Amended Complaint, Alaska seeks to confirm its title to the submerged lands underlying Glacier Bay, located near the northern end of the Archipelago.[2] These lands all lie within three miles of Alaska's coast line—however it is measured—and title to them would thus ordinarily vest with the State under the SLA. The United States contends, however, that Congress and the Executive unambiguously reserved these submerged lands for the Federal government before statehood. But there is a "strong presumption" that Alaska received title to these lands, and the Federal government cannot defeat that title "unless [its] intention was definitely declared or otherwise made very plain." *United States* v. *Alaska*, 521 U.S. 1, 34 (1997) (citation omitted). To prevail, the United States must show *both* that an Executive reservation clearly included submerged lands, *and* that Congress "explicitly recogniz[ed]" this reservation at statehood. *Id.* at 44-45.

Alaska contends that neither Congress nor the Executive expressed the requisite unambiguous intent to reserve the lands underneath Glacier Bay. In recommending for the United States, the Master found Congress' intent to defeat state title solely in Section 6(e) of the Alaska Statehood Act. That section provides in part that Federal lands in Alaska used for conservation and protection of the fisheries and wildlife of Alaska under the provisions of three specific

[2] The area around Glacier Bay is now a National Park, but at statehood it was designated a National Monument. Report at 227.

statutes shall be "transferred and conveyed to the State of Alaska by the appropriate federal agency." Alaska Statehood Act, Pub. L. No. 85-508, § 6(e), 72 Stat. 343 (codified at 48 U.S.C. note prec. § 21) (App. 2a). A proviso to that section, however, states "[t]hat *such transfer* shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife * * *." *Id.* (emphasis added). Thus, under its plain language Section 6(e) transferred to Alaska certain Federal property used for fish and wildlife conservation under specific statutes, but exempted from such transfer a subset of those lands withdrawn or set apart as wildlife refuges or reservations.

As the Master noted, it is *undisputed* that Glacier Bay "does not fall within the ambit of § 6(e)'s main clause." Report at 267. Yet the Master interpreted the proviso as retaining lands, such as Glacier Bay, not otherwise covered by the main clause. *Id.* at 272. As shown below, that interpretation defies the plain language of the statute and the strong presumption of state title the law requires.

2. The "Pockets and Enclaves." Wholly apart from the Glacier Bay claim, Alaska seeks to quiet title to submerged lands that are more than three miles from the shores of the islands of the Archipelago but inside of the outer perimeter of the Archipelago formed by those islands, as well as lands three miles seaward of that perimeter. These include a checkerboard of "pockets" and "enclaves" of lands depicted on Appendix C to the Report. Because the islands are fewer than six miles from each other or the mainland at most but not all points, measuring the "coast line" only from the physical shores results in isolated "enclaves" of submerged lands that are more than three miles from any shore but entirely surrounded by lands less than three miles from shore. *Cf. Alaska*, 521 U.S. at 9. Such a measurement method (known as the "arcs-of-circles" method, *id.*) also yields "pockets" of lands that are more than three miles from any physical shore but within the outer perimeter of the Archipelago. The Uni-

ted States contends that this crazy quilt of isolated pockets and enclaves are Federal lands because they are more than three miles from any shore—even though many of those lands are completely surrounded by lands that indisputably belong to Alaska. Alaska, by contrast, has asserted two separate and distinct bases for its title to all submerged lands—including the pockets and enclaves—lying within or three miles seaward of the outer perimeter of the Archipelago.

a. Historic Inland Waters. In Count I of the Amended Complaint, Alaska asserts that the waters of the Archipelago, including the pockets and enclaves, were "historic inland waters" at statehood and thereafter, and that Alaska therefore possesses title to the submerged lands underlying them.

Historic inland waters are those over which the United States has continuously exercised authority with the acquiescence of foreign nations. *Id.* at 11. Here, Alaska presented evidence showing, *inter alia*, that both before and after statehood the United States unequivocally claimed the waters of the Archipelago as inland in an international arbitration and before this Court, that it used those claimed boundaries for discriminatory enforcement of fishing laws against foreign nations, that Russia had also taken steps to enforce the same boundaries, and that foreign nations understood and acquiesced to the claim. The Master nevertheless recommended granting summary judgment to the United States on this issue. Alaska takes exception to that recommendation.

b. Juridical Bays. Count II of the Amended Complaint alternatively alleges that Alaska has title to the submerged lands within the outer perimeter of the Archipelago, including the pockets and enclaves, because the waters qualify as "juridical bays" under Article 7 of the Convention on the Territorial Sea and Contiguous Zone ("the Convention"), Sept. 10, 1964, 15 U.S.T. 1606, 516 U.N.T.S. 205, T.I.A.S. No. 5639 (reproduced at App. 4a-5a).

This Court employs the geographic standards of the Convention to determine whether areas of water, including areas

more than three miles from a physical shore, are considered juridical bays subject to state jurisdiction. *See United States* v. *Louisiana* ("*Louisiana Boundary Case*"), 394 U.S. 11, 35 (1969). Alaska contends that when certain islands are properly "assimilated" to the mainland, such that they are legally considered part of that mainland, the waters of the Archipelago form two bays under the standards of the Convention. *See* App. 11a-17a. The Master recommended granting summary judgment to the United States on Count II as a matter of law because, in his view, the standards for assimilation for certain islands and one of the standards of the Convention were not met. Alaska takes exception to that recommendation.

3. The Tongass. In Count III of the Amended Complaint, Alaska sought to quiet title to the submerged lands within the general boundaries of the Tongass National Forest, which encompasses much of the Archipelago. Initially, the United States asserted that it retained title to all submerged lands within the Tongass that are less than three miles from the physical shores of the islands or the mainland. After Alaska moved for summary judgment on that issue, however, the United States capitulated. Rather than oppose that motion, the United States conceded that Congress had not expressed the requisite clear intent to defeat Alaska's presumptive title. Pursuant to 28 U.S.C. § 2409(a)(e), the United States then sought confirmation of a disclaimer of title to those submerged lands. The Master, over the objections of certain amici, recommended that the Court confirm that disclaimer and dismiss Count III for lack of jurisdiction as provided in Section 2409(a)(e). *See* Report at 276-294. Alaska urges the Court to adopt that recommendation.

C. Procedural Background.

On June 12, 2000, the Court accepted jurisdiction over Alaska's original complaint and referred the case to a Special Master for initial recommendation. On January 8, 2001, the Court granted Alaska leave to amend its complaint to include the alternative juridical bay count. On January 14, 2002, the

Court denied certain movants leave to intervene. The parties then conducted written discovery and filed a series of summary judgment motions before the Master covering every count of the Amended Complaint.[3] On March 30, 2004, without conducting a trial or hearing any testimony, the Master issued a final report recommending that the Court grant the United States' motions for summary judgment on Counts I, II, and IV, deny Alaska's motions for summary judgment, and confirm the United States' disclaimer relating to Count III. Alaska now urges the Court to overrule the recommendations as to Counts I, II, and IV, grant Alaska summary judgment on those counts, and confirm the disclaimer.

SUMMARY OF ARGUMENT

I. The Court should grant summary judgment to Alaska on Count IV. There is a strong presumption that Alaska received title to the submerged lands underlying Glacier Bay as an incident of her sovereignty, and this title cannot be defeated unless Congress manifested an unequivocal intent to do so. The Master erred in concluding that a proviso to Section 6(e) of the Alaska Statehood Act constitutes this unambiguous intent. The plain language of the proviso applies to a different category of lands that indisputably does *not* include Glacier Bay. And even if Section 6(e) were ambiguous on the point, such ambiguity could not defeat the State's title given the clear-statement rule that governs this issue.

II. The Court should grant summary judgment to Alaska on Count I. The Master wrongly discounted the United States' continual and unopposed public assertions of authority over the waters of the Archipelago, and rested his Report on erroneous interpretations of internal government documents that cannot repudiate those public claims. The United States explicitly claimed the waters as inland in the 1903

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[3] Alaska did not file a written motion for summary judgment on Count IV, but the Master recognized Alaska's oral motion on that count. *See* Report at 229. Alaska renews that motion here.

Alaska Boundary Arbitration. It consistently used the claim as the predicate for discriminatory fisheries enforcement against foreign vessels. The Alaska Supreme Court, shortly after statehood, found that the waters were inland. And the United States reiterated that position to this Court in a formal brief. Foreign nations not only understood that the United States claimed the waters of the Archipelago as inland; they relied on that claim in conducting their own international relations. And vital interests of the United States fortify the conclusion that the waters are historic inland waters.

III. The Court should alternatively grant summary judgment to Alaska on Count II because the waters of the Archipelago are juridical bays under Article 7 of the Convention. In *United States* v. *Maine*, 469 U.S. 504 (1986), the Court held that Long Island Sound is a juridical bay because Long Island is properly assimilated to the mainland. Under that precedent, the central block of islands in the Archipelago qualifies even more strongly for assimilation. And once that assimilation is recognized, the Archipelago comprises two juridical bays meeting all the standards of Article 7.

ARGUMENT

The Master heard no witnesses, conducted no trial, and made no findings of fact, but instead recommended granting summary judgment. Accordingly, the Court considers this case *de novo* to determine whether judgment is proper as a matter of law. *See Nebraska* v. *Wyoming*, 507 U.S. 584, 590 (1993). Indeed, even if the Master had engaged in factfinding, the Court's consideration in this original action would still be *de novo* upon an "independent review" of the record. *United States* v. *Maine*, 475 U.S. 89, 98 (1986); *United States* v. *Louisiana*, 470 U.S. 93, 101 (1985); *Louisiana* v. *Mississippi*, 466 U.S. 96, 102 (1984).

To evaluate motions for summary judgment in original actions, this Court applies Fed. R. Civ. P. 56 and the precedents construing that rule. *Nebraska*, 507 U.S. at 590. Under the rule, "[s]ummary judgment is appropriate when

there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* Under this standard, Alaska is entitled to summary judgment on all counts not already conceded by the United States.

I. THE STATE HAS TITLE TO THE SUBMERGED LANDS UNDERLYING GLACIER BAY.

Title to lands underlying her navigable waters is "an inseparable attribute" of Alaska's sovereignty. *Louisiana*, 363 U.S. at 16. Thus, there is a "strong presumption against defeat of a State's title," and the Court "will not infer an intent to defeat a future State's title to inland submerged lands '*unless the intention was definitely declared or otherwise made very plain.*' " *Alaska*, 521 U.S. at 32-33, 34 (emphasis added; citation omitted). In *Alaska*, the Court confirmed that this clear-statement rule applies to offshore submerged lands, because such lands belong to the State under the SLA unless "expressly" retained by the United States. 43 U.S.C. § 1313(a). As the Court held, "[w]e cannot resolve 'doubts' about whether the United States has withheld state title to submerged lands beneath the territorial sea in the United States' favor, for doing so would require us to find an 'express' retention of submerged lands where none exists." *Alaska*, 521 U.S. at 35.

The United States asserts that it retained the lands underlying Glacier Bay—which would otherwise belong to the State under the SLA—through a pre-statehood executive reservation. To sustain this claim, the United States must show both that the executive reservation clearly includes submerged lands *and* that Congress "explicitly recogniz[ed]" this reservation at statehood. *Id.* at 44-45. *Accord Idaho* v. *United States*, 533 U.S. 262, 273 (2001). The United States has not carried its heavy burden because it has identified no statute evidencing Congress' explicit ratification.[4]

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[4] Although the Court need not decide the issue, Alaska also disagrees with the Master's conclusion that the Executive reservations establishing Glacier Bay National Monument clearly included submerged lands. *See* Report at 229-264. As Alaska has shown, the Monument's borders were drawn partly through water to denote islands and other uplands to be included, not to clearly include the submerged lands. *See* AK Opp. to Mot. for Summ. Judg. on Count IV at 3-11. Moreover, the failure to reserve the *entire* seabed would not have defeated the United States' asserted purposes for the reservation—studying glaciers, the small remnants of "interglacial forests," and flora and fauna; and preserving bears. *Id.* at 11-42. But because Congress never unambiguously ratified the purported reservation, the Court need not address whether the reservation clearly included submerged lands.

A. Section 6(e) Of The Statehood Act Expresses No Clear Intent To Retain Lands Under Glacier Bay.

The Master found that a single proviso, appended to Section 6(e) of the Alaska Statehood Act, constitutes the clear statement by Congress that is required for the United States to retain lands underlying Glacier Bay. The Master erred. The statute's plain language shows no intent to ratify such a reservation, much less the unambiguous intent the United States must prove to prevail. That is reason enough to grant the State summary judgment on Count IV.

The Statehood Act establishes a reticulated set of property-transfer rules specifying which sovereign gained title to which lands at statehood. To begin with, Section 5 sets a default rule that the United States retains title to all its property. Statehood Act § 5 (App. 1a). But that baseline standard contains an important qualification: "[e]xcept as provided in Section 6." *Id.* Section 6(m), in turn, provides that the State would receive all its rights to submerged lands under the SLA. *Id.* § 6(m). Thus, under Section 5 the United States retained title to the upland portions of Glacier Bay National Monument, while under Section 6(m) the State received title to the submerged lands (if any) within that reservation.

Section 6(e) addressed a narrow category of *other* property. It provides, in pertinent part:

> All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 * * * and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 * * * and June 6, 1924 * * * shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: * * * *Provided*, That *such transfer* shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. [*Id.* § 6(e) (last emphasis added).]

The statute is clear on its face. The main clause transfers to the State a general class of property that the United States would have otherwise retained under Section 5: property of the United States used for fish and wildlife conservation under three listed statutes. This generalized exception to the Section 5 default rule that the United States retains title to its own property is immediately followed by a narrow proviso that sets forth an exception to the exception: "*such transfer* shall not include" lands withdrawn or set apart as wildlife refuges or reservations. The reflexive phrase "such transfer" is significant. It limits the reach of the proviso to "such transfer" already described in Section 6(e)'s main clause, thereby retaining for the United States a *subset* of the antecedent lands set forth in the main clause.

The proviso thus comes into play only if property would otherwise be covered by Section 6(e)'s main clause. That is dispositive here. For as the Master noted, it is *undisputed* that the lands underlying Glacier Bay "do[] not fall within the ambit of Section 6(e)'s main clause" because they were not used for fish and wildlife conservation under the designated statutes. Report at 267. The proviso therefore could not—and did not—ratify any reservation of those lands, because

the proviso's plain terms apply exclusively to an entirely different set of lands. It is impossible to interpret that proviso as nevertheless covering lands that are indisputably *not* included in "such transfer," much less expressing an unambiguous intent to ratify a reservation of lands not included. *See Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253-254 (1992) (courts "presume that [the] legislature says in a statute what it means and means in a statute what it says there").

Indeed, the proviso would be superfluous as applied to U.S. properties, such as Glacier Bay, not covered by the main clause. In Section 4 of the Statehood Act, Alaska disclaimed all title to any property not affirmatively granted by the Act, and Section 5 reserved to the United States all federal lands *not* transferred to the State in Section 6. *See* App. 1a. These non-transferred lands included the uplands of the Glacier Bay Monument. Thus, it would not only be illogical, but also unnecessary, to interpret the proviso as applying to lands such as those in the Monument, which were already retained under another provision of the Act. The point of the proviso was to retain a subset of the lands that were *exempted* by Section 6(e)'s main clause from the Section 5 default rule.[5]

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[5] Unlike monument lands such as Glacier Bay, wildlife refuges were operated under laws specified in the statute. Orders reserving Alaska wildlife refuges expressly stated that they were created for purposes of the Alaska Game Law specified in Section 6(e). These include the orders creating the two largest reservations—the Kenai Moose Range, 6 Fed. Reg. 6471 (1941), and the Kodiak Wildlife Refuge, 6 Fed. Reg. 4287 (1941), which together comprised more than half the wildlife refuge land in Alaska before statehood. *See Hearings Before the Senate Comm. on Interior and Insular Affairs on S. 50 ("1954 Hearings")*, 83rd Cong. 64-65 (1954) (Ex. AK-452). These refuges were covered by the main clause because they were used by the United States for the "sole purpose of conservation and protection of the fisheries and wildlife of Alaska" under the cited laws. This clause conveyed property that the United States used solely for management of local fish and wildlife, rather than property it used even partially for federal management

The Master therefore erred in concluding that the proviso retains lands, including the Glacier Bay National Monument, that do not fall within the main clause. While it is possible, as a theoretical matter, for Congress to draft a proviso that operates independently of its main clause, *cf.* Report at 268-269, Section 6(e) was unquestionably not drafted that way.

But even if Section 6(e) were ambiguous, Alaska would still be entitled to summary judgment. Given the importance of these lands to state sovereignty and the strong presumption of state title, a court cannot construe a statute to restrict that title "unless [such an] intention was definitely declared or otherwise made very plain, or was rendered in clear and especial words." *Utah Div. of Lands* v. *United States*, 482 U.S. 193, 198 (1987). By definition, an ambiguous statute cannot satisfy this clear-statement rule. *See Alaska*, 521 U.S. at 35 ("We cannot resolve 'doubts' about whether the United States has withheld state title to submerged lands"); *Gregory* v. *Ashcroft*, 501 U.S. 452, 470 (1991) ("In the face of such ambiguity, we will not attribute to Congress an intent to intrude on state governmental functions * * *."). Under no circumstances can the traditional state-federal balance be disrupted in the obscure manner suggested by the Master.

B. The Statute's Purposes and Legislative History Show That It Does Not Cover Glacier Bay.

Although it is unnecessary to examine them given the clear-statement rule, Section 6(e)'s purposes and legislative history also show that the proviso was never intended to

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functions. Most of the other wildlife refuges in Alaska at statehood were for migratory birds, seals, and sea otters, *see id.* at 76, which were administered under federal laws relating to interstate commerce or international treaties and therefore did not fall within the main conveyance clause. But regardless of which precise properties were covered by the main clause, the statutory language still limits the property retained by the proviso to a subset of the property otherwise included in that conveyance clause.

apply to the lands underlying Glacier Bay. Section 6(e) addressed a specific concern: fish and wildlife management. Before statehood, the federal Fish and Wildlife Service ("FWS") managed these resources. Section 6(e) transferred to the State the property that FWS had used for local fish and wildlife management functions, except a specified portion of those properties that Congress felt FWS ought to retain.[6] There is nothing in the legislative history of Section 6(e) evincing an intent that the provision apply to other properties such as the Glacier Bay Monument—a National Park Service ("NPS") site indisputably not among the category of properties Section 6(e) would otherwise transfer to the State.

As the Senate Report on the Act stated about Section 6(e):

> Under Supreme Court decisions control over the fisheries and wildlife within its borders passes to a new State upon its admission as an incident of statehood. However, *the Fish and Wildlife Service* * * * has many valuable installations which have been effectively furthering the long-range interests of this great natural asset of the Territory and under this section the Territory gets the equipment that will be necessary for the State to carry on the work for which the Federal Government has been responsible. *Specifically excepted from the grant* are wildlife refuges. [S. Rep. No. 83-1028 at 31 (1954) (Ex. AK- 451) (emphases added).]

The legislative history confirms what the statute so clearly provides: that the wildlife refuges referred to in the proviso are a "specific[ ] except[ion]" to the grant of FWS property conveyed by the main clause.

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[6] The "appropriate federal agenc[ies]," App. 5a, that were to convey the property under the main clause are those within FWS that implemented the cited laws, the Bureau of Commercial Fisheries, the Bureau of Sport Fisheries and Wildlife, and the Alaska Game Commission. *See* 25 Fed. Reg. 33 (1960) (Ex. AK-450).

Congress added the proviso to the Statehood bill in 1950 at the request of Interior Secretary Chapman, who wanted to divide property and functions between the State and FWS. Previously, the draft section was broad enough to give the State all FWS property in Alaska. *See Hearings Before the Senate Comm. on Interior and Insular Affairs on H.R. 331 and S. 2036*, 81st Cong. 49 (1950). While Congress wanted the new State to assume local fish and wildlife management, it also wanted FWS to retain federal functions such as implementing laws relating to international treaties or interstate wildlife—particularly seals, sea otters, and migratory birds. With the new proviso, the amended conveyance clause of Section 6(e) stated that the State would get only the property related to its new functions—local fish and wildlife management—but not that related to the continuing federal functions. *Id.* The proviso assured that FWS would retain its wildlife refuges, even those that it had managed under the statutes of general application cited in the conveyance clause.

Thus, the proviso's purpose was to *exclude* from the conveyance wildlife refuges for local fish and game that FWS administered and wished to retain. This was necessary because management of local fish and wildlife is a traditional police power of the states. *See Baldwin* v. *Fish & Game Comm'n of Montana*, 436 U.S. 371, 391 (1978); *Carey* v. *South Dakota*, 250 U.S. 118, 120 (1919). FWS was concerned that without a proviso Section 6(e) would convey wildlife refuges that FWS wanted to keep, particularly the Kenai Moose Range and Kodiak Wildlife Refuge. In Senate testimony, FWS regional director Clarence Rhode expressed concern that if the Kenai Range were not excepted from the conveyance, the new State might compromise the purposes of that wildlife refuge. *See 1954 Hearings* at 67 (*"Senator Cordon*: I take it that you think that there is quite a little bit that probably [the State] would not do [if the Range were conveyed]. *Mr. Rhode*: That is what I am afraid would be the case.") (Ex. AK-452). When asked what properties the State would administer under Section 6(e), Rhode replied

"[a]ll of the wildlife and fisheries of Alaska, *other than these national refuge areas* [*e.g.*, Kenai and Kodiak]. That is what the bill provides. That would be 99 percent of the administration of game and fish." *Id.* at 70-71 (emphasis added).

There was no indication that Section 6(e) applied to anything other than FWS properties. To the contrary, when asked about wildlife refuges in connection with Section 6(e), Rhode testified that Alaska had 26 refuges totaling about 8,000,000 acres. *Id.* at 64. He clearly was not referring to any NPS reservations, because upon hearing that figure, a Senator remarked that these refuges exceeded the total acreage under NPS jurisdiction in Alaska. *Id. See also* Ex. AK-453 at 422. Rhode discussed the Kenai Range, *1954 Hearings* at 65-66, the Kodiak Refuge, *id.* at 72-74, the reservation of the Aleutian islands, *id.* at 69, and a musk ox reservation, *id.* at 75, and stated that the remaining retained refuges were "small areas." *Id.* Rhode testified that under proposed Section 6(e) these game refuges would not be turned over to the State. *Id.* at 71. No mention was made of any park or monument areas as falling within the provision. In fact, the NPS Director had testified about Glacier Bay National Monument immediately before Rhode, yet neither he nor the Senators ever mentioned Section 6(e). *Id.* at 46-55.

Thus, the legislative history confirms that the proviso was never intended to apply to lands, including Glacier Bay, not otherwise covered by the main clause.

C. The Court In *Alaska* Did Not Hold That Section 6(e)'s Proviso Is Independent Of Its Main Clause.

The Master based his recommendation in part on a misinterpretation of this Court's holding in *United States* v. *Alaska*, 521 U.S. 1 (1997). There, the Court held that Congress' express retention of wildlife refuges in the proviso to Section 6(e) evinced a clear statement of intent to retain all refuge lands—submerged and upland—covered by the proviso. *Id.* at 55-61. But contrary to the Master's view, *see* Report at 271-272, nothing in *Alaska* holds that the proviso is

divorced from the main clause of Section 6(e). In fact, the Court expressly presumed the opposite.

In *Alaska*, the Court held that submerged lands within the Arctic National Wildlife Range ("ANWR") were expressly retained under the proviso to Section 6(e). The Master noted that the Court in *Alaska* "assumed * * * that the Range would fit within the scope of the main clause of § 6(e) but for the proviso," and therefore "did not need to address the specific argument whether § 6(e)'s proviso could reserve lands that did not otherwise fit within the scope of § 6(e)'s main clause." Report at 270. But in holding that the proviso covered ANWR lands, the Court remarked that "[u]nless all lands—submerged lands and uplands—covered by the [ANWR reservation] application were 'set apart' within the meaning of the proviso to § 6(e), *they would have passed to Alaska under the main clause of § 6(e)*." *Alaska*, 521 U.S. at 60-61 (emphasis added). Thus, the Court expressly assumed that ANWR lands would have been covered by the main clause but for the proviso.[7] The Court certainly did not decide that the proviso could apply to lands *not* covered by the main clause, and in fact presumed the opposite.

The Master nevertheless opined that *Alaska* addressed the issue because the decision "treated the proviso as an independent retention clause, not merely as a limitation on a transfer clause." Report at 272. This reasoning is flawed. *Alaska* did treat the proviso as a retention clause: it held that the United States retains all lands covered by the proviso.

[7] It is immaterial to this case whether that assumption was correct. But under the reasoning of *Alaska*, ANWR would have been covered by the main clause. Unlike Glacier Bay, ANWR had not yet been created at statehood, but the Court held that it fell within the proviso because it had been set apart for a possible *future* wildlife refuge. *Id.* at 60. Under that reasoning, ANWR would have been covered by the main clause because it could eventually have been used for the purposes specified in that clause.

Specifically, the Court disagreed with the State's argument that even if ANWR were covered by the proviso, that would simply exempt it from the transfer clause, with the result that the submerged lands would not be retained and would instead pass to the State under Section 6(m). *Id.* at 271-272. Thus, the Court held that the proviso is a retention clause that trumps Section 6(m) for the property covered by the proviso. But while the Master was correct that "the Court decided that § 6(e)'s proviso itself may retain the property it describes," *id.* at 272, that entirely begs the question of what property it describes. In *Alaska*, the Court held that ANWR was covered by the proviso—and therefore was retained by the United States—because ANWR would otherwise be covered by the main clause. Here, by contrast, it is *undisputed* that Glacier Bay is *not* covered by the main clause. Thus, it was not retained by the proviso, and any contrary conclusion goes far beyond what the Court said or suggested in *Alaska*.[8]

D. Glacier Bay National Monument Was Not A Reservation For The Protection Of Wildlife.

In any event, even if the proviso unambiguously retained title to lands "withdrawn" or "set apart" as "reservations for the protection of wildlife," Alaska would still be entitled to summary judgment because Glacier Bay was not such a reservation. The Master found otherwise by relying on 16 U.S.C. § 1, the provision of the Antiquities Act that gives NPS general authority to regulate national monument lands. In his view, because Glacier Bay National Monument had

[8] Even if the Court *had* assumed the proviso was independent of the main clause, that unexamined assumption would not bind the Court here. *See Brecht* v. *Abrahamson*, 507 U.S. 619, 631 (1993) ("since we have never squarely addressed the issue, and have at most assumed the applicability of [the standard], we are free to address the issue on the merits"); *United States* v. *L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952) (issue "not * * * raised in briefs or argument nor discussed in the opinion of the Court" is not *stare decisis*); *Webster* v. *Fall*, 266 U.S. 507, 511 (1925).

wildlife in it, under 16 U.S.C. § 1 it was "set aside as [a] refuge[] or reservation[] for the protection of wildlife" within the meaning of Section 6(e)'s proviso. *See* Report at 273.[9]

The Master erred. Although the Antiquities Act broadly states that monuments have as a fundamental purpose the conservation of scenery, natural and historic objects, and wildlife, that statute is a general grant of regulatory authority, not a statement of the primary purpose of *every* reservation. Some monuments may have the primary purpose of protecting animals that are "objects of scientific interest," *Cappaert* v. *United States*, 426 U.S. 128, 142 (1976) (Devil's Hole pupfish), while others may be intended to preserve a historic site. Not every monument that contains wildlife was "set aside" to protect it. For example, the existence of birds at the historic Fort Sumter National Monument does not mean that this land was "withdrawn or set aside" as a "refuge[] or reservation[] for the protection of wildlife." Each monument's purposes are specific to its particular reservation.[10]

The United States created the Glacier Bay National Monument because, in the words of the 1925 proclamation establishing it, "[t]his area presents a unique opportunity for the scientific study of glacial behavior and of resulting move-

9 The law grants NPS the authority to regulate the use of monuments, "by such means and measures as conform to [their] fundamental purpose * * *, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same * * *." 16 U.S.C. § 1.

10 Although NPS regulations prohibited hunting in *all* monument lands, Ex. AK-379, that does mean that every monument was "withdrawn" as a "reservation[] for the protection of wildlife," even where, as here, the requisite "object of scientific interest" was not an animal. *Cf. Cappaert*, 426 U.S. at 142. In fact, hunting was *permitted* in the Kenai Moose Range and the Kodiak Wildlife Refuge, which without question were included in Section 6(e)'s proviso. *See 1934 Hearings* at 65 (Ex. AK-452).

ments and development of flora and fauna and of certain valuable relics of ancient interglacial forests." Ex. AK-361 at 1.[11] The Master found that the study of "fauna" that developed as glaciers receded "necessarily embraced its preservation." Report at 274. A purpose of the monument was to permit scientists to *study* how flora and fauna develop upon barren land that is exposed as glaciers retreat. The fauna might be protected as an incident of such study, but that does not make protecting wildlife the purpose of the monument as intended by Section 6(e). And given that the Master had to divine this purpose by extrapolating from the 1925 and 1939 proclamations as informed by the general NPS regulatory authority, *id.* at 273-276, it cannot be said that Section 6(e) constitutes the requisite *unambiguous* intent to ratify.[12]

For all these reasons, the Court should grant summary judgment to Alaska on Count IV of the Amended Complaint.

11 The 1939 proclamation adding lands to the Monument was worded similarly. *See* Ex. AK-382. And the letter from the Interior Secretary forwarding the proclamation stated only that the area to be added "present[ed] an exceptional opportunity for the study of glacial action and post-glacial ecology." Ex. AK-384.

12 Indeed, in 1939 there was, at a minimum, serious doubt within the Executive as to whether the Antiquities Act even allowed national monuments for the purpose of preserving wildlife. *See* Ex. AK-385 (1936 Justice Department opinion that statute was meant "to preserve individual objects rather than to preserve species"); Ex. AK-386 at 2 (1937 Justice Department memorandum noting prior opinion "that a monument could not, in any event, be established for the protection of animals"). As late as *1949*, a national monument proclamation was revised because of this view that "the Antiquities Act did not permit establishment or enlargement of a national monument to protect plant and animal life." *United States* v. *California*, 436 U.S. 32, 34 n.5 (1978). Regardless of whether this view "ever became official government policy," Report at 262, the lack of clarity on the point further shows that Section 6(e) did not *unambiguously* retain Glacier Bay.

II. THE WATERS OF THE ARCHIPELAGO ARE HISTORIC INLAND WATERS.

In Count I of the Amended Complaint, Alaska contends that it has title to the submerged lands underlying the waters of the Archipelago, including the pockets and enclaves, because the waters are "historic inland waters." To establish this title, "the State must demonstrate that the United States: (1) exercises authority over the area; (2) has done so continuously; and (3) has done so with the acquiescence of foreign nations." *Alaska*, 521 U.S. at 11. The Court also considers the "vital interests of the United States." *Alabama & Mississippi Boundary Case*, 470 U.S. 93, 103 (1985). The waters of the Archipelago satisfy all these requirements.

A. The United States Continuously Exercised Authority Over The Waters Of The Archipelago.

1. The United States Claimed The Waters As Inland From At Least 1903 Until 1971.

The Master correctly noted that the United States claimed the waters of the Archipelago as inland at the 1903 Alaska Boundary Arbitration. *See* Report at 56-57. In that international proceeding, the United States described the "political coast line" of Alaska as running along the *outside* of the islands and crossing each of the entrances, and described the boundary in precise detail. Ex. AK-26 at 31-32. As the United States made clear, "*[t]he boundary of Alaska—that is, the exterior boundary from which the marine league is measured—runs along the outside edge of the Alaskan or Alexander Archipelago, embracing a group composed of hundreds of islands.*" Ex. AK-8 at 15 (emphasis added). This Court long ago recognized the significance of this claim, holding that it was an example of the United States' then-extant "publicly stated policy" of claiming as inland areas of water enclosed by headlands less than ten miles apart. *Alabama & Mississippi Boundary Case*, 470 U.S. at 106-107 ("This 10-mile rule represented the publicly stated policy of the United States at least since the time of the Alaska Boundary Arbitration in 1903.").[13]

The Master rightly rejected the United States' argument that these assertions of sovereignty were merely hypothetical musings of counsel, concluding that "the United States clearly defined the political coast line of Southeast Alaska and explained the character of waters lying behind this political coast line" and that the "the United States was expressing a considered analysis of the area." Report at 61. And he rightly recognized this Court's holding that statements of counsel for the United States—even in a brief in a case to which no foreign nation was a party—can notify foreign nations of a historic waters claim. *Id.* at 117. *See Alabama & Mississippi Boundary Case*, 470 U.S. at 108-109.

But the Master incorrectly opined that the 1903 assertions could not have made foreign nations, other than Britain, aware of the claim. Report at 118. The evidence shows otherwise. Even distant Norway knew of and affirmatively relied on the U.S. claim to the Archipelago in making a similar claim in its 1951 *Fisheries Case* dispute with Britain. *See* Ex. AK-82 at 162-163. Thus, as this Court has *already* held, there is "*no doubt* that foreign nations were aware that the United States had adopted [the] policy" applied in 1903 because "the United States' policy was cited and discussed at length by both the United Kingdom and Norway in the celebrated *Fisheries Case*." *Alabama & Mississippi Boundary Case*, 470 U.S. at 107 (emphasis added). Norway noted that

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[13] This 10-mile rule was not the only general policy advanced by the United States during at least part of this period. *See Alaska*, 521 U.S. at 11-21. But, as the Court has held, the general 10-mile rule can support a finding of inland status where, as here, it is "coupled with specific assertions of the status of the [area] as inland waters." *Alabama & Mississippi Boundary Case*, 470 U.S. at 107. As this Court has recognized, *id.* at 106-107, and as discussed below, the general 10-mile inland waters rule was expressly applied to the waters at issue here.

the United States had "stressed the notion of the 'outer coast line' " in 1903, and quoted from the United States' claim, including its description of the "outer coast line" of Alaska as running along the outside of the Archipelago. Ex. AK-82 at 218-219. Britain, for its part, sought to distinguish Norway's situation but never denied the validity of the U.S. claim. Ex. AK-83 at 154-155. And Britain's admitted understanding is, in fact, the most pertinent for this case since Britain was then the foreign nation most directly affected by the Alaska claim given its sovereignty over neighboring Canada.

The 1903 claim, moreover, was not an isolated event. To the contrary, the waters of the Archipelago continued to be characterized as inland well beyond statehood. As the Master noted, shortly after statehood both the trial court and the Alaska Supreme Court expressly found that the waters of the Archipelago were historic inland waters. *See Metlakatla Indian Community* v. *Egan*, 362 P.2d 901, 926-927 & n.112 (Alaska 1961); Report at 89-96. And the United States *itself* confirmed in a 1964 brief to this Court that the claim had been made and was still valid.[14]

Although the Master dismissed this public assertion as a "mistaken" policy, Report at 124, such statements to this Court are the exact kind of evidence this Court has held will confirm to foreign nations that the United States has made a historic waters claim. *See Alabama & Mississippi Boundary Case*, 470 U.S. at 106-107 (statement in brief can put foreign nations on notice of historic waters claim).[15] Thus, this

[14] *See* Ex. US-I-6 at 130-131 (statement to Court that a strait leading to inland waters "is treated as a bay" and that "[e]xamples" of such bays "include the straits leading into the Alaskan Archipelago"); *id.* at 89 ("Another instance where the United States applied the ten-mile [closing line] rule to its own coast occurred in the Alaska boundary arbitration of 1903.").

[15] It is unlikely that this stated position was a "mistake," as it was made in an exhaustive review of the United States' maritime

Court was correct in holding that the 1903 claim was an example of a "publicly stated policy of the United States." *Id.* In any event, to establish historic waters "it is necessary to prove only open and public exercise of sovereignty, not actual knowledge by the foreign governments." *Id.* at 110.

Not until *1971* did the United States make an about face and, for the first time, publish charts showing the supposed "pockets and enclaves" of high seas within the Archipelago. *See* Report at 109-114. But as the Court held with respect to Mississippi Sound in the *Alabama & Mississippi Boundary Case*, 470 U.S. at 112, such a disclaimer came far too late to defeat the State's vested title to the lands at issue here.

2. The United States Consistently Based Enforcement Actions Against Foreign Vessels On Its Claim To The Waters of the Archipelago.

This continuous assertion of sovereignty was not an empty gesture; rather, the United States consistently used its claim to the waters of the Archipelago as the predicate for discriminatory enforcement authority against foreign vessels. Under both this Court's precedents and international law, such an enforcement regime represented an affirmative assertion of sovereignty confirming the Archipelago as historic waters.

a. The 1906 Alien Fishing Act prohibited foreign, but not domestic, commercial fishing "in any of the waters of Alaska." 34 Stat. 263. In 1924, the United States intercepted the Canadian vessel *Marguerite* for violating that Act in one of the "pockets" that the United States now argues were international waters at the time. Ex. AK-33; Exs. AK-461, AK-462 (App. 9a-10a). Britain complained that the seizure occurred "approximately five and one-half (5 1/2) miles from the nearest United States territory," in what it said were international waters. Ex. AK-34. The United States nonethe-

delimitation policy. *See* Ex. US-I-6 at 49-141. But the key point is that the United States characterized the waters of the Archipelago as inland, not the stated rationale for that characterization.

less responded that the *Marguerite* was seized in waters "within the jurisdiction of this Government." Ex. AK-35 at 1-2. Britain did not pursue the matter further. Report at 132.

This action was not an aberration but rather an application of settled Federal enforcement policy that remained until 1971. In the 1920s, regulations declared that the Alien Fishing Act would be enforced in *all* waters of the Archipelago. *See* Ex. AK-36 at 19, 20-23 (1926 regulations applying Act to "[a]ll waters" between Dixon Entrance and Yakutat Bay); Ex. AK-37 at 26 (1928 regulations). In 1930, the federal Bureau of Fisheries informed Alaska enforcement officials that "Interior coastal waters cease to be International waters at and above [the] place where distance from headland to headland is less than ten nautical miles," Ex. AK-39—the same boundaries the United States claimed in 1903. Federal regulations in place from 1950-1956, *see* Exs. AK-52 to AK-58, were interpreted as applying to all waters within the Archipelago and three miles seaward of the headland-to-headland closing lines. Ex. AK-59 at 1; Report at 71. In 1956, that interpretation was adopted as a formal regulation. Ex. AK-60. Later testimony before Congress showed that from 1946-1968 "there was no foreign fishing allowed" within the jurisdiction of the 1956 regulations. *Provisional U.S. Charts Delimiting Alaskan Territorial Boundaries: Hearing Before the Senate Comm. on Commerce* ("*1972 Hearing*"), 92d Cong. 25-26 (1972) (Ex. AK-38).[16]

Thus, even after statehood, the Federal government continued to assert enforcement authority against foreign vessels in

[16] Later State Department studies described this as the "[a]doption by United States of straight baseline method in measuring limits of territorial waters in Alaska," and noted that the regulations "made clear * * * that [the] obligation to control fishing in the high seas * * * did not extend to waters inside a belt of three miles measured from lines drawn between islands adjacent to the coast of Alaska." Exs. AK-31 at 25-26, AK-61 at 19-20, AK-62 at 13-14.

all the waters of the Archipelago, including the pockets and enclaves the United States says were high seas at the time. In 1959, State Department Geographer Pearcy prepared maps of the Archipelago that used closing lines similar to those adopted in 1903. *See, e.g.*, Ex. AK-103. The clear weight of evidence shows that the charts, although unofficial, were relied on by the Federal government to enforce fisheries laws against foreign vessels. *See* Exs. AK-104, AK-105 at 15e (Coast Guard and Interior Department statements). In 1964, the Interior Department stated that "Dr. Pearcy's boundaries * * * were determined adequate basis for the purposes of law enforcement upon foreign nationals." AK-106 at 20e. Likewise, it "was made known to the State Department that the charts will be used for enforcement purposes and therefore may serve as the basis for action by United States patrol vessels against foreign nationals." Ex. AK-107 at 17e. Indeed, the charts became "standard reference" for federal officials in Alaska. *1972 Hearing* at 17 (Ex. AK-38).

b. In brushing aside this evidence of continuous enforcement authority against foreign vessels, the Master made two errors, one factual and one legal. *First*, he incorrectly opined that "[t]he record does not establish with clarity where the Coast Guard seized the *Marguerite*." Report at 67-68. *See id.* at 119. The Master overlooked undisputed evidence—a contemporaneous Coast Guard map—that plotted precisely where the *Marguerite* was intercepted, in an area unquestionably more than three miles from land. *See* Ex. AK-461 (map showing location), App. 9a-10a (location with reference to three-mile limit) (Ex. AK-462); Reply in Supp. of AK Mot. for Summ. Judg. on Count I at 20-21.[17] Thus, the United States and Britain agreed that the incident took

[17] The Coast Guard initially described the seizure as having occurred at a non-existent location. *See* Ex. AK-33; Report at 67-68. It later prepared a map, however, pinpointing the precise location of the interception. *See* App. 9a-10a (Exs. AK-461, AK-462).

place more than three miles offshore. This enforcement action and Britain's acquiescence to it, considered in light of the consistent U.S. policy, demonstrate that the United States did not deviate from its claim to the Archipelago's waters.

Second, the Master erred in opining that it was "immaterial" whether the United States enforced fishing regulations against foreigners in areas it now claims were high seas at the time. Report at 120. In *United States* v. *Alaska*, 422 U.S. 184 (1975) ("*Cook Inlet*"), the Court focused on the seizure by Alaska state officials of Japanese vessels for fishing in an area asserted to be historic waters. The Court held that the incident "deserve[d] scrutiny *because the seizure of a foreign vessel more than three miles from shore manifests an assertion of sovereignty to exclude foreign vessels altogether*" and, therefore, such an assertion "must be viewed * * * as an exercise of authority over the waters in question as inland waters." *Id.* at 201, 202 (emphasis added). The Court ultimately did not find the incident determinative, but only because "the United States neither supported nor disclaimed the State's position" and Japan, rather than acquiescing, "never acceded to the position taken by Alaska." *Id.* at 203. By contrast, the United States, not the State, seized the *Marguerite* in accord with its longstanding publicly announced policy, and (as noted below) Britain did accede to that position.

Cook Inlet correctly states the law. U.S. regulation of fishing by its own nationals in waters does not show that the waters are inland "for the United States can and does enforce fish and wildlife regulations against its own nationals, even on the high seas." *Id.* at 198. And *non-discriminatory* enforcement in an area—*i.e.*, "afford[ing] foreign vessels the same rights as were enjoyed by American ships"—is also not determinative because there is a "limited circumscription of the traditional freedom of fishing on the high seas * * * based, in part, on a recognition of the special interest that a coastal state has in the preservation of the living resources in the high seas adjacent to its territorial sea." *Id.* at 198-199.

But *discriminatory* enforcement—forbidding foreigners, but not U.S. nationals, to fish in an area—is an assertion of authority to exclude foreign vessels that gives rise to historic inland water status. Indeed, as explained in a United Nations study relied on by the United States in this case:

> Suppose * * * the [nation] has continuously asserted that its citizens had the exclusive right to fish in the area, and had, in accordance with this assertion, kept foreign fishermen away from the area or taken action against them. In that case the State in fact exercised sovereignty over the area, and its claim, on a historical basis, that it had the right to continue to do so would be a claim to the area as its "historic waters." [Ex. US-I-4 at 13-14.]

In *Cook Inlet*, the Court relied on the absence of evidence that the Alien Fishing Act was applied against foreigners in the area at issue. Here, by contrast, there is clear evidence that the United States asserted the authority to, and did, enforce the Act in all the waters of the Archipelago. This assertion of authority to exclude foreign vessels, when considered in light of the United States' well-known claim to the waters, easily satisfies the first prong of the historic waters inquiry.

3. The United States' Claim Is Consistent With Russia's Prior Claim.

The United States' claim to the waters of the Archipelago was a continuation of Russia's similar claim, to which the United States succeeded when it purchased Alaska. In 1824, Russia granted American mariners a ten-year treaty right, which they otherwise would not have possessed, to "frequent * * * interior seas, gulphs, harbours, and creeks [*i.e.*, small bays]" upon the coast of Alaska for the purpose of fishing and trading with the natives. 8 Stat. 304 (1825). The Master opined that this treaty showed only Russia's claim to waters within a three-mile "cannon shot" of shore, Report at 27-30, but the record, when examined in proper context, shows that the Russian claim extended to the entire Archipelago.

After this treaty expired, Russia took "active steps to exclude foreign traders from the 'Straits.' " Ex. AK-13 at 69. These steps included stationing the brig *Chichagoff* at the "southern boundary line" of the Archipelago (near the current border with Canada) to "intercept[] foreign vessels entering the inland waters of the colony." *Id.* at 70. The United States' *own* expert characterized this action as "a Russian blockade." Ex. US-I-2 at 22. Indeed, it was noted at the time that "the Russians had a ship in southern boundary waters 'watching their lines that they might not be encroached upon.' " *Id.* (citation omitted). And in 1836, the *Chichagoff* informed the British Hudson's Bay Company that one of its vessels "was forbidden to travel to Sitka by way of the interior channels." *Id.* at 24 (Russian ship described as the "*Chitsekoff*"). Also in 1836, Russia boarded the American vessel *Loriot* outside of a harbor and "ordered [it] to leave the waters of His Imperial Majesty," thereby forcing it to return to Hawaii. Report at 35 (quoting Ex. AK-11).[18]

The Master discounted this evidence, opining that the 1824 treaty was unclear as to the "interior seas" it covered, *id.* at 25-28, that the expulsion of the *Loriot* may have been only from a "cannon shot" zone off shore, *id.* at 33-37, and that the *Chichagoff* merely provided mariners with notice that the treaties had expired without blocking passage. *Id.* at 33. But as noted, the United States' *own* expert, relying on contemporaneous sources, described the *Chichagoff* as a "Russian blockade," that was "watching their lines" and that had "forbidden" a vessel from traveling to Sitka, which lies on the Archipelago's outer coast, "by way of the interior channels." And the Master merely speculated that Russia was enforcing a three-mile "cannon shot" zone when it repelled the *Loriot*, since no account of the incident was so limited. Thus,

[18] In 1834, Russia had also barred the British vessel *Dryad* from proceeding up the Stikine River, on the ground that the British " 'had no right to navigate these Straits.' " Ex. US-I-2 at 18.

regardless of any ambiguity regarding which waters were covered by the 1824 treaty, the evidence as a whole shows that Russia claimed the entire Archipelago as its own, just as the United States would do when it succeeded to the territory.

As the Master noted, the historic waters test would be satisfied if Russia and the United States continuously exercised authority over the Archipelago from 1824. *See* Report at 131 n.37. As shown, ample evidence supports that finding. But even ignoring Russia's actions, the United States' own continuous 68-year claim from 1903 to 1971 is more than sufficient to establish the area as historic waters.[19] Contrary to the Master's tentative view (Report at 131) the United States has claimed historic waters based on a far shorter time period. As the United States has admitted, it first claimed Chesapeake Bay as inland waters in 1885, and the Bay was listed among the world's historic inland waters in 1927, only 42 years later. *See* Ex. AK-307 at 15.

4. The Evidence Relied On By The Master Does Not Support His Recommendation.

The Master based his contrary recommendation on four scattered pieces of evidence. *See* Report at 109-114. None of this evidence counteracts the continuous, public assertions of sovereignty made by both the United States and Russia.

First, the Master relied on an 1886 letter from Secretary of State Bayard to the Treasury Secretary. *See id.* at 109-110; Ex. US-I-6 at 14a-17a. The letter is hardly probative here, since it was internal correspondence that primarily addressed a dispute on the East coast and did not announce to any for-

[19] Statehood is generally the point at which title to submerged lands passes to the states, thereby preventing the Federal government from divesting that title. But if the status of the Archipelago as historic waters did not ripen until between 1959 and 1971 (when the United States attempted to disclaim title), Alaska would still retain title. *See Alabama & Mississippi Boundary Case*, 470 U.S. at 106-110 (relying on post-statehood evidence to find state title).

eign nation that the United States had abandoned a claim to the Archipelago. But in any event, the letter specifically refers to the United States' "own claim to a jurisdiction over territorial waters on the northwest coast beyond the three-mile zone," *id.* at 13a-14a, thereby confirming that the claim existed. And the historical evidence negates any inference that this letter confirmed a universal U.S. practice of never claiming as inland those waters enclosed by headlands more than six miles apart. To the contrary, there are many prior statements—some referenced in Bayard's letter—making clear that the United States had claimed such jurisdiction.[20] Indeed, a strict three-mile rule in 1886 would have defeated the United States' claims to Delaware Bay, Chesapeake Bay, Long Island Sound, and Mississippi Sound, all of which are more than six miles across, yet are recognized as historic inland waters. *See* Report at 13 & nn.10, 11.

Second, the Master referenced 1934 correspondence from the Secretary of Commerce to the Secretary of State. *See* Report at 70-71, 110; Ex. US-1-14. Once again, this internal correspondence put foreign nations on notice of nothing. And in any event, the correspondence simply notes that Canadian fishermen may fish outside the three-mile limit north of the line dividing the United States from Canada. *Id.*

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[20] *See, e.g.*, Ex. AK-84 (1793 Attorney General opinion that nation owns waters surrounded by its lands); Ex. AK-85 at 2, 3, 5, 7 (1793 and 1796 statements that three-mile limit does not apply to "land-locked" waters); *Extent of the Marginal Sea* 641 (Henry G. Crocker, ed. 1919) (1804 Thomas Jefferson statement that "wherever you can see from land to land all the water within the line of sight is in the body of the adjacent country" and the three-mile limit is measured from this "line of sight"); Ex. AK-87 at 129 (1849 statement that offshore jurisdiction extends to parts of the sea enclosed by headlands); Ex. AK-89 at 3 (letter to Spain recognizing that three-mile jurisdiction around Cuba was measured from fringing islands); *Mahler* v. *Norwich & New York Transp. Co.*, 35 N.Y. 352, 355-356 (1866) (islands enclose inland waters).

See Report at 70-71.[21] Nothing in these letters clearly states that the three-mile limit was not to be measured according to the headland-to-headland line clearly claimed 1903.

Third, the Master noted that no published list of the world's historic waters includes the Archipelago. *See id.* at 111. But even the Master recognized that inclusion in such a list "is not a requirement under the Court's precedents," and that the Court held Mississippi Sound constituted historic inland waters even though it does not appear on such a list. *Id.* Such lists of necessity only give examples of historic waters, for there would be insurmountable difficulties in trying to prepare a definitive list. *See* US-I-4 at 23-24.

Finally, the Master relied on the United States' 1971 disclaimer. *See* Report at 112-114. But the 1971 disclaimer is of no moment because for all the reasons set forth above Alaska's title ripened *before* the disclaimer. In the *Alabama & Mississippi Boundary Case*, 470 U.S. at 112, the Court held that a similar 1971 disclaimer could not defeat a state's historic title that had ripened earlier. The same is true here.

B. Foreign Nations Acquiesced To The Claim.

"[W]hen foreign governments do know or have reason to know of the effective and continual exercise of sovereignty over a maritime area, inaction or toleration on the part of the foreign governments is sufficient to permit a claim of historic title to arise." *Id.* at 110. Here, the evidence of acquiescence is even clearer, for not only did foreign governments know of and tolerate the United States' claim to the waters of the Archipelago, they affirmatively agreed with it and cited it in support of their own maritime claims.

As noted, in the 1951 *Fisheries Case* Norway affirmatively relied on the United States' claim to the waters of the Archipelago in pressing its own case. *See supra* at 23-24.

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[21] The referenced line was the so-called "AB" line, which was established at the 1903 boundary arbitration. *See* Report at 75.

Far from registering disagreement, Britain assumed the validity of that claim, arguing instead that the U.S. claim did not validate Norway's claim because the U.S. baseline approach was limited "to cases where the interior waters are genuinely enclosed by the configurations of the island groups." Ex. AK-83 at 154. Moreover, in the 1910 Atlantic Coast Fisheries Arbitration, Britain cited several examples of the U.S. practice of claiming enclosed waters as inland, including the claim to the Archipelago made at the 1903 Alaska Boundary Arbitration. *See, e.g.*, Ex. AK-80 at 83-86. And importantly, Britain acquiesced to the 1924 *Marguerite* seizure by failing to pursue its protest after having been informed that the vessel was intercepted in U.S. waters.

The Master incorrectly discounted this evidence. He noted the absence of any formal statement that foreign nations would acquiesce in the exclusion of their vessels from the pockets and enclaves. Report at 132. But that is not the standard; "inaction or toleration" is all that is required to show acquiescence. *Alabama & Mississippi Boundary Case*, 470 U.S. at 110. The Master opined that foreign nations did not know of the United States' claim, Report at 132, but that assertion is incorrect as noted above. Foreign nations not only knew of the claim; they relied on it in conducting their own foreign affairs. The Master asserted that Britain did not acquiesce in the *Marguerite* seizure because fishing enforcement does not bear on the historic waters inquiry, and because "Britain ultimately let the matter drop." Report at 132. As already shown, the discriminatory enforcement of fishing regulations against foreign nations is powerful evidence of an assertion of inland status. *See supra* at 28-29. And the fact that Britain "let the matter drop" is clear evidence of both inaction and toleration. Finally, the Master discounted the statements of Britain and Norway in the *Fisheries Case*, Report at 133, but given that mere "inaction or toleration" can establish acquiescence, surely foreign nations' affirmative *reliance* on another nation's claim is even stronger evidence proving the point.

C. Vital Interests Of The United States Support Historic Inland Waters Status.

"[T]he vital interests of the coastal nation, including such elements as geographical configuration, economic interests, and the requirements of self-defense" may be considered in determining historic inland waters. *Alabama & Mississippi Boundary Case*, 470 U.S. at 102. Those factors reinforce a finding that the Archipelago comprises historic waters.

In geographic terms, the waters of the Archipelago plainly are linked more to the coastal mainland than to the open sea. As John Muir observed long ago, mariners see these land-locked straits and sounds as "inland waters that are about as waveless as rivers and lakes." Ex. AK-1 at 13. *Supra* at 2.

In economic terms, the waters are likewise vital to the region. The indigenous inhabitants used the waterways to travel, for land travel was virtually unknown. Ex. AK-5. Even today, the waters are the region's highways. *See supra* at 3. Commercial fishing and the cruise ship industry are the mainstays of the local economy. Thus, Congress long ago recognized the importance of these inland waters to the people of Alaska. *See, e.g., Southeastern Alaska*, H.R. Doc. No. 83-501, at vii (1954) ("[t]he importance of the local waterways to the basic economy of the region cannot be overemphasized") (Ex. AK-133).

In terms of defense, many of the pockets and enclaves of what the United States now claims were high seas in 1959 lie well within the Archipelago. *See* Report, App. C. But allowing potentially hostile vessels to navigate deep into the Archipelago was never contemplated. *Cf. 1972 Hearing* at 14 (under 1971 charts, "a Russian destroyer [could] sail all the way up" the pockets of high seas). Indeed, during and after World War II the military highlighted for Congress the strategic benefits and defensibility of the Archipelago's waters.[22]

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[22] *See, e.g., Skagway Harbor, Alaska*, H.R. Doc. No. 79-746, at 12 (1946) (referring to the "comparatively easily defended Inside

The Master felt that the United States' interest in freedom of navigation outweighed these interests. Report at 135. But when Alaska protested the United States' 1971 disclaimer, the State Department concluded that Alaska's claim would have *no* effect on the United States' interest in freedom of navigation and that a continued refusal to accept Alaska's claim was not justified. *See* Ex. AK-118 at 3-5, 8, and 12.

* * *

This Court has endorsed the view that

> [a] relatively relaxed interpretation of the evidence of historic assertion and of the general acquiescence of other states seems more consonant with the frequently amorphous character of the facts available to support [historic waters] claims than a rigidly imposed requirement of certainty of proof, which must inevitably demand more than the realities of international life could ever yield. [*Alabama & Mississippi Boundary Case*, 470 U.S. at 114 (quotation and citation omitted).]

The Master's crabbed view of the evidence fails this test. He discounted continuous assertions by Russia and the United States of authority over the Archipelago because there were not numerous recorded enforcement actions taken specifically within the disputed pockets and enclaves. But during Russian times, very few vessels plied the remote Alaskan waters. *See, e.g.*, Ex. AK-11 at 245-246 (no more than four American vessels per year). Thus, it is not surprising that the Russians would have enforced their claim simply by "watching their lines" through a "blockade" established at the

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Passage") (Ex. AK-314); *Report of the Alaskan Task Force*, S. Doc. No. 82-10, at 12-13 (1951) (the Archipelago's inland waterway provides "an alternate route [to crossing the Gulf of Alaska] in the event of war"), 49 ("the inland water passage * * * should more easily be protected from interruption by enemy submarines"), 60-61 (this is "the most naturally protected supply line from a military standpoint") (Ex. AK-317).

southern boundary. Ex. US-I-2 at 22. And because the pockets and enclaves comprise a small proportion of the total waters of the Archipelago, it is not surprising that there were not numerous enforcement actions within them. But as the *Marguerite* incident shows, when a foreign vessel was caught in one of those areas, it would be summarily expelled.

Properly viewed, the evidence shows that the United States continually exercised authority over the waters of the Archipelago with the acquiescence of foreign nations. In the *Alabama & Mississippi Boundary Case*, the Court held that Mississippi Sound comprises historic inland waters based on less compelling evidence than exists here. The Court should therefore sustain Alaska's exceptions on Count I and grant summary judgment to the State.[23]

III. THE WATERS OF THE ARCHIPELAGO COMPRISE JURIDICAL BAYS.

Alternatively, the Court should hold that Alaska has title to the pockets and enclaves because, as alleged in Count II of the amended complaint, the waters above those lands qualify as "juridical bays" under the Convention.[24] The waters qual-

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[23] Contrary to the Master's view, Report at 136-137, additional briefing is not needed regarding the Grand Pacific Glacier's alleged retreat into Canada. First, the United States waived the argument by not raising it in opposition to the State's summary judgment motion or even in the United States' own motion. *Cf. id.* Second, as the Master noted, there is persuasive authority that two nations may jointly claim historic inland waters. *Id.* at 137. Third, the United States claimed *all* the waters of the Archipelago until 1971. Thus, even if a very small portion of those waters may have touched Canada at some time due to the vagaries of glacial movement, that unrecognized event does not change the fact that the United States continually claimed the remaining waters as inland with the acquiescence of foreign nations. No more is required to establish historic waters under this Court's precedents.

[24] The claimed bays, denoted "North Bay" and "South Bay," are shown at App. 11a (Ex. AK-129). *See also* Report, App. D.

ify once it is recognized that certain islands must be "assimilated" to the mainland to form a headland of the bays—just as this Court held in *United States* v. *Maine*, 469 U.S. 504 (1985), that Long Island Sound is a juridical bay because Long Island must be treated as part of the mainland.

A. Legal Standards For Juridical Bays.

The Court has adopted the definitions of the Convention to determine the line marking the seaward limit of inland waters. *See United States* v. *California*, 381 U.S. 139, 163-165 (1965); *Louisiana Boundary Case*, 394 U.S. at 35. Article 7 sets forth the requirements for juridical (legal) bays. *See* App. 4a. The standard has two parts. First, the area in question must meet a descriptive test, which requires that there be a "well-marked" and deeply penetrating "indentation" in the coast. Convention art. 7(2). Second, the area must meet the more objective and mathematical "semi-circle" test. *See id.* arts. 7(2), 7(3).[25] For each area meeting that two-part standard, the waters enclosed within 24 nautical mile (nm) closing lines or baselines are automatically inland waters. *See id.* arts. 7(4), 7(5); *see also id.* art. 5(1).

Before applying the tests, however, it is necessary to identify the land that forms the "jaws" of the asserted bay. While bays are generally indentations into the mainland, the Court has recognized that islands may in fact function as extensions of the mainland and thus be treated as forming the headlands of a juridical bay. *Louisiana Boundary Case*, 394 U.S. at 60-67; *Maine*, 469 U.S. at 514-520. *Maine* confirmed not only that a very large island can be assimilated to the mainland coast, but also that such assimilation could result in the recognition of a legal bay where before none was recognized.

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[25] The semi-circle test requires that the area of the bay be at least as large as a semi-circle with a diameter equal to the sum of the lengths of the bay's mouths. App. 4a. That test is not at issue here, because each of the claimed bays passes it easily. *See* Report at 207, 214; Ex. AK-160; App. 15a, 17a (Exs. AK-152, AK-153).

Roughly in the middle of Southeast Alaska, three large interlocking islands—Mitkof, Kupreanof, and Kuiu—effectively form a peninsula that divides the waters of Southeast Alaska into areas that qualify as legal bays to the north and the south. *See* App. 11a (Ex. AK-129). Once this assimilation is recognized, the claimed bays are juridical bays under Article 7 because they are well-marked indentations whose penetration is in such proportion to their mouths as to contain landlocked waters. Moreover, as in *Maine*, legal bay status is buttressed by the fact that the areas are in fact used as bays.

B. Assimilation Is Required Under *Maine*.

In *Maine*, 469 U.S. at 517, the Court reiterated the "consensus that islands may be assimilated to the mainland, and that a common-sense approach [is] to be used to determine which islands may be so treated." The Court saw "no reason to depart from those principles," and concluded, "once again, that an island or group of islands may be considered part of the mainland if they 'are so integrally related to the mainland that they are realistically parts of the "coast" within the meaning of the Convention.' " *Id.* (citation omitted). The Court noted that the factors set forth in the *Louisiana Boundary Case* continued "to be useful in determining when an island or group of islands may be so assimilated." *Id.* These factors include an island's "size, its distance from the mainland, the depth and utility of the intervening waters, the shape of the island, and its relationship to the configuration or curvature of the coast," as well as the island's "origin * * * and resultant connection with the shore." *Id.* at 516 (quoting *Louisiana Boundary Case*, 394 U.S. at 65 n.84, 66).

Of the more than one thousand islands in the Archipelago, only a handful are so closely related to the mainland or a neighboring island as to be realistically considered a continuation of the mainland or neighboring island. It is those few exceptional islands, separated in their natural state by stretches of unusually shallow waters and fitting together like jigsaw pieces, that give rise to the claimed juridical bays.

Contrary to the Master's view, assimilation of Mitkof, Kupreanof, and Kuiu islands—across the aptly named Wrangell Narrows and Rocky Pass—is required under *Maine*. Each of the blocks of the island peninsula presents a *stronger* case for assimilation than Long Island, which the Court has already held is an effective extension of the mainland.

1. **Wrangell Narrows.** The shores of Mitkof Island and Kupreanof Islands fit tightly together and only a narrow and riverine channel—Wrangell Narrows—passes between them. *See* App. 11a (Ex. AK-129), Ex. AK-131. The average width of the 15 nm channel is 0.4 nm, Ex. AK-135, and its area is a mere 5.52 square nm, Ex. AK-343. As originally constituted, the channel was as shallow as 10 feet. Ex. AK-146 at 5. The Master agreed that these characteristics weigh in favor of recognizing the realistic connection between the islands. Report at 181-182. But he found against assimilation principally because he thought that Wrangell Narrows possesses "significant navigational utility." *Id.* at 183.

This conclusion cannot be reconciled with the Court's treatment of the depth and utility of the East River in *Maine*. The Court relied upon the fact that the East River in its original state was "as shallow as 15-to-18 feet, with a rapid current that made navigation from Long Island Sound extremely hazardous." *Maine*, 469 U.S. at 518. In its improved state, the East River supports substantial traffic across a 34-foot-deep channel. *Id.* at 518 n.11. Significantly, however, such commercial use did not prevent assimilation.[26]

Measured against this standard, the less useful Wrangell Narrows is a stronger candidate for assimilation. Given its original controlling depth of ten feet, the Narrows could not support the vessels in the coastwise service between

[26] The Special Master's report in *Maine* noted that commercial traffic had used the channel, even in its unimproved state, since the 1600s. *See* Report of the Special Master ("*Maine* Report") at 40, *United States* v. *Maine*, No. 35, Orig. (1983) (Ex. AK-130).

Skagway and Puget Sound without delay. A portion of the traffic still used the Narrows, but its tortuous channel and strong currents made it a "menace to life and property." Ex. AK-146 at 5, 9, 13, 15; *see also* Ex. AK-137 at 3. These hazardous conditions led to substantial improvements that more than doubled the controlling depth and significantly widened the channel. The improvements were described as the equivalent of the "construction of an artificial waterway," and the route in its original state as "of negligible value for shipping." Ex. AK-148 at 11. But even as improved, its serpentine course, strong currents, and still-shallow depth prevent use by larger vessels. Ex. AK-139 at 8, 43. More strongly than the East River in *Maine*, the hazards of Wrangell Narrows' shallow, rocky and tortuous channel strongly favor treating Kupreanof Island as an extension of Mitkof Island.

The remaining assimilation factor, the island's origin and resultant connection with the shore, also favors assimilation. In finding otherwise, the Master noted that the islands at issue were not formed of materials brought *from* the mainland by river or glacial action. Report at 171-172. But the materials forming the islands did not come from the adjacent mainland precisely because the islands and the mainland were already of a piece. As in *Maine*, both features "share a common geologic history." 469 U.S. at 519. Tens of millions of years ago, belts of rock or terranes containing the mainland *and* all the islands in Southeast Alaska attached themselves to North America's western margin as a result of tectonic collisions. *See* Ex. AK-466. Importantly, the narrow channels between any of the islands proposed for assimilation mark no change in the character of the rocks. *See, e.g.*, Ex. AK-144 at 454-455. The more recent effects of glaciation also support assimilation. That process—which carved remarkably deep channels elsewhere in Southeast Alaska—left only notably shallow channels between the islands proposed for assimilation. *See* Ex. AK-3 at 3.

Finally, the Master erred in concluding that the lack of social and economic connections comparable to those between Long Island and Manhattan weighed against assimilation in this case. Report at 168-169. To the extent that this factor merits consideration at all, "common sense," *Maine*, 469 U.S. at 517, must play a part. Southeast Alaska is a sparsely populated area, with vast areas of designated wilderness and few communities. In this context, there is as much interchange between the features to be assimilated as is realistic. *See, e.g.*, Ex. US-II-31 at 12 (ferry service between Kake and Petersburg); Ex. US-II-27 at 3-4 (commuter traffic to Petersburg from eastern shore of Kupreanof Island). A contrary holding would render virtually any unpopulated or remote area ineligible for assimilation as a matter of law, regardless of its physical connection to the mainland.

2. Rocky Pass. Under *Maine*, a realistic connection also exists between Kupreanof and Kuiu Islands. The large islands' shape and their position in relation to one another favor assimilation of the features. *See* App. 11a (Ex. AK-129). Kupreanof Island has a vaguely rectangular shape. Along approximately one third of its western coast, the irregularly shaped Kuiu Island is nestled close off shore, separated only by a notably narrow and intricate channel called, appropriately, Rocky Pass. *Id.*

The width of Rocky Pass at mean lower low water presents a stronger case for assimilation than the East River. Long Island at its closest is 0.5 nm from the mainland, *Maine*, 460 U.S. at 518, while Kupreanof and Kuiu Islands are separated at places by less than 0.1 nm. *See* Ex. AK-135 at HW14382 (at the Summit). While for the approximately 12 nm course of the East River, the average channel width approaches 1 nm, for 14 nm in Rocky Pass, it is 0.57 nm. *See* Ex. US-II-22; Ex. AK-135 (1 km = 0.54 nm); Report at 153. And the channel's area is just 11.23 square nm. *See* Ex. AK-343.

The shallowness and inutility of Rocky Pass reinforce the case for assimilation. In its natural state, Rocky Pass—the

central part of Keku Strait—had a controlling depth of only *one foot*. Because of numerous rocks and strong currents, small vessels could make a hazardous passage only during high-water slack. *See* Ex. AK-133 at 9. Dredging improved the channel to a controlling depth of just five feet. But even with the improvements, traverse of the "narrow intricate passage" is still recommended only at high-water slack and with local knowledge. *See* Ex. AK-132 at 164, 174-175.

The characteristics of Rocky Pass evidence a stronger connection between the two islands than was recognized across the East River in *Maine*. Although the islands' coasts diverge at either end of Rocky Pass, the fact that the coasts may not be connected elsewhere does not diminish their realistic connection at Rocky Pass. That connection—like the one that exists across the East River but not the entire facing coast of Long Island—justifies assimilation.

The Master, however, concluded that "the entire area across which the two land-forms of interest face one another," as identified by what he termed the "45-degree-test," must be considered the intervening waters. Report at 154-160 (citation omitted). He therefore included the broad bay-like areas at either end of Rocky Pass as part of the water area that must be ignored to recognize an effective connection between Kuiu and Kupreanof Islands. *Id.* at 177-181.

That was error. The East River also has broad bay-like openings at both ends (Long Island Sound and New York Harbor), *see* Ex. AK-464, yet the Court determined assimilation in *Maine* by looking only at the River. So too here. The 45-degree-test was developed for determining the mouths of bays. *See* Report at 156. For this case and for Long Island Sound, it is not effective at identifying intervening waters for an assimilation inquiry. Had the test been used in *Maine*, the relevant intervening waters would have been much broader and Long Island would likely not have met the

standards for assimilation. *See* Ex. AK-464; Reply in Supp. of AK Mot. for Summ. Judg. on Count II at 6.[27]

Even if the test were appropriate to identify intervening waters, it works best only where the features' axes are aligned and their shapes are relatively uniform. *See, e.g.*, Hodgson & Alexander, *supra*, at 21 fig. 11 (Ex. AK-151). That configuration is not present here, nor was it in *Maine*. The irregular shape of Kuiu Island forms not one but three distinct areas of water between its shores and Kupreanof Island: Rocky Pass and two broader bay-like areas to the north and south. The assimilation inquiry, however, should focus on the place, if any, where a realistic connection may be found under the Court's factors. Just as two land areas joined by a narrow isthmus would be connected even if the isthmus separated two bays, so Kupreanof and Kuiu islands are effectively joined at Rocky Pass.

Rocky Pass, like the East River, is properly considered the intervening waters across which an effective connection between the coastal formations is forged. In that significant stretch of channel-like water, there is an unmistakably close relation between the shores that justifies assimilation under the Court's factors. The Master's inflexible approach prevents that realistic assessment by incorrectly exaggerating the area of water to be ignored.

3. Dry Island. The Master failed to acknowledge that Dry Island, to which the major blocks of the island peninsula connect, is also readily assimilated to the mainland. *See* Report at 192-193. It is visually apparent from a map that the island's shape, size and relationship to the mainland all

[27] Indeed, the main proponents of the test recognized that it is not always warranted even for its original purpose. As they have noted, for some coastal configurations, its validity is reduced and "the rule does not prevail." Robert D. Hodgson & Lewis M. Alexander, *Towards an Objective Analysis of Special Circumstances* 10 (1972) (Ex. AK-151).

favor assimilation. *See id.*, App. H (Ex. AK-334). The shallowness and inutility of the narrow and quintessentially riverine channel between the island and mainland—the north arm of the Stikine River—also call for assimilation given that the north arm is navigable only by small craft at high water. *See* Ex. AK-132 at 168. Thus, just as the Court had no difficulty treating Manhattan Island as part of the New York mainland even though it is separated from it by the Harlem River, so too is Dry Island part of the mainland of Alaska.

* * *

In sum, the characteristics that justified treating Long Island as part of the mainland are present for each component of the island peninsula in this case. To paraphrase *Maine*:

> Both the proximity of [the island peninsula] to the mainland, the shallowness and inutility of the intervening waters as they were constituted originally, and the fact that [they are] not * * * opening[s] to the sea, suggest that [the island peninsula] be treated as an extension of the mainland. [469 U.S. at 519 (alterations shown).]

Moreover, both cases involve large islands that relate to the coast such that they "result [in] * * * large pocket[s] of water * * * [that] [are] almost completely enclosed by surrounding land." *Id.* at 518. *See* App. 11a (Ex. AK-129). As in *Maine*, those waters qualify as juridical bays.

C. North And South Bays Satisfy Article 7.

Under the Convention, a juridical bay is "a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast." Convention art. 7(2). The bay must also pass the semi-circle areal test. *Id.* arts. 7(2), 7(3). Both North and South Bays meet these standards, with the result that most of the waters of the Archipelago are enclosed behind baselines totaling 24 nm for each bay. App. 12a, 13a (Exs. AK-164, AK-165), *see also* Convention art. 7(5). The Master erred in concluding otherwise.

1. **North Bay.** The Master opined that North Bay is not a "well-marked indentation" as required by Article 7(2). *See* Report at 222.[28] Though he readily acknowledged the clear bay-shape of the coast of North Bay, he did not consider those contours to be obvious from looking at a map *with all islands depicted.* In addition, he considered that past delimitations of the area—which have not acknowledged the existence of a juridical bay—weighed against finding the bay a well-marked indentation. *Id.* at 217-218.

The Master's approach fails to give proper significance to the consequences of assimilation. Once the island peninsula is viewed as extending the mainland, the contours of the bay are apparent. *See* App. 14a (graphic with islands removed) (Ex. AK-149).[29] The existence of a well-marked indentation is not negated because that indentation is filled with islands. *See* App. 15a (islands restored) (Ex. AK-152). In fact, in the eyes of any mariner the maze of sheltering islands that comprise the Archipelago necessarily *increases* the waters' connection with Alaska. *See supra* at 2. It defies logic to hold that their presence actually detracts from bay status.

The fact that the claimed juridical bays have not previously been recognized as such cannot disqualify them. Under the Convention, it is the fact of an obvious indentation that matters, not past delimitation. North Bay is at least as well-marked an indentation as Long Island Sound, which prior to *Maine* was considered a geographic strait. Indeed, if prior delimitation controlled, then Article 7 would be largely useless, since there could be no new applications of it.

That North Bay is a "well-marked indentation" is reinforced by the fact that the area "constitute[s] more than a

[28] The Special Master agreed that the other requirements of Article 7(2) were satisfied. Report at 214-215, 220-222.

[29] Reliance on such an exhibit is consistent with the United States' usual practice. *Maine* Report at 24 n.17 (Ex. AK-467).

mere curvature of the coast." Convention art. 7(2). This Court has paired these complementary requirements, *Maine*, 469 U.S. at 514, and North Bay satisfies both. It is far too pronounced an indentation to be a "mere curvature in the coast." North Bay thus meets the requirements of a bay.[30]

2. **South Bay.** The Master opined that South Bay is not a well-marked indentation and lacks sufficient penetration in proportion to the width of its mouth. *See* Report at 222-224. For the same reasons that North Bay is a well-marked indentation, so too is South Bay. It is a pronounced and well-marked indentation, constituting far more than a mere curvature of the coast, *see* App. 16a, 17a (Exs. AK-150, AK-153), and the presence of islands supports a juridical bay finding.

South Bay also has sufficient proportion of penetration to width. For this assessment, the penetration should be compared to the width of the *actual* openings or entrances to the bay, not a fictitious mouth that ignores islands. That is the width used under Article 7(3)'s semi-circle test.[31] And this Court has identified the lines across the natural entrances described in Article 7(3) as the baselines "*for all purposes*," explicitly rejecting the notion that islands forming multiple mouths are relevant only to the semi-circle test. *See Louisiana Boundary Case*, 394 U.S. at 55. Instead, as the drafters of the Convention stated in their Commentary, "the total

[30] As with Count I, *see supra* n.23, there is no need for more briefing regarding the alleged retreat of the Grand Pacific Glacier, *cf.* Report at 219-220, because the United States never presented the issue in its motion for summary judgment or opposition. In any event, North Bay is *presently* a juridical bay regardless of any earlier status. Under the SLA, the coast line is "ambulatory and [will] vary with the frequent changes in the shoreline." *Louisiana Boundary Case*, 394 U.S. at 32-35. *See Alaska*, 521 U.S. at 31.

[31] *See* Convention art. 7(3) ("Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths.").

length of the lines drawn across all the different mouths will be regarded as the width of the bay." (1956) 2 Y.B. Int'l L. Comm'n 269 (quoted in *Louisiana Boundary Case*, 394 U.S. at 55 n.74). *Accord*, 1955 Commentary (Ex. AK-156).[32] The natural entrances to South Bay, *see* App. 17a (Ex. AK-153), have a total width of 47.49 nm. The bay's penetration far exceeds this amount, *see* Ex. AK-159 (partially reproduced at Report, App. J), resulting in a proportion of penetration to width that easily passes any conceivable test.

But even using the Master's fictitious mouth, *see* Report at 202-205, the proportion is sufficient. To determine penetration, the Master used the "longest straight line" method, which measures the longest line from any point on the bay closing line to the point of deepest penetration within the bay. *See id.* at 205-206. Under this method, the bay's penetration is 95.5 nm. *Id.* at 225 n.16.[33] When compared to the 120 nm width of a line drawn between the mainland headlands, the proportion of penetration to width is 0.8:1. *Id.*

That is sufficient. Article 7 sets no minimum numeric proportion, and as the Master correctly noted there is no authority requiring a 1:1 ratio. Report at 210-211. South Bay's penetration, which is almost 1:1, easily passes muster. For even if one must ignore islands in a bay's mouth in calculating its width, as noted in the drafters' Commentary relied on in the *Louisiana Boundary Case* "the presence of islands at the mouth of an indentation tends to link it more closely to the mainland, and this consideration may justify

[32] For additional support for Alaska's position on the proper measure of the width of the mouth, *see* Mem. in Supp. of AK Mot. for Summ. Judg. on Count II at 31-39, Reply in Supp. of AK Mot. for Summ. Judg. on Count II at 20-22.

[33] The United States' proposed 75 nm line, Report at 224, is not the "longest straight line" and thus does not capture the full penetration inland from the fictitious mouth. For this reason, we use the Master's 95.5 nm estimate based on Alaska's exhibit. *Id.*

some alteration of the ratio between the width and the penetration of the indentation." 394 U.S. at 56 (*quoting* (1956) Y.B. Int'l L. Comm'n 269). Thus, even if South Bay's penetration were otherwise deemed sub-optimal compared to its fictitious mouth, the presence of large islands blocking much of the opening "tends to link [the bay] more closely to the mainland," and renders its proportion sufficient. *Id.*

The sufficiency of South Bay's penetration is reinforced by the results of the alternative "perpendicular" method, which uses a perpendicular line from the closing line to a point of deepest penetration. *See* Hodgson & Alexander, *supra*, at 8-9 (Ex. AK-151). This method appears to have been used in *United States* v. *California*, when the Court approved Monterey Bay as a legal bay. *See* 381 U.S. at 169-170, App. B. Using this method, Monterey Bay's proportion of penetration to width is 0.48:1. Report at 211. South Bay's penetration under this method is about 68 nm, *see* Report, App. J, yielding a proportion of 0.57:1 when compared to the 120 nm fictitious mouth. A perfect semicircular bay has a proportion of 0.5:1 under the perpendicular method (its radius divided by its diameter). South Bay's proportion thus exceeds both this benchmark as well as the result this Court accepted as adequate for Monterey Bay.

D. The Rationale For Bay Recognition And The Nature Of The Areas Favor Juridical Bay Status.

The waters comprising North and South Bays are the kind Article 7 was designed to protect. As the Court has stated:

> The ultimate justification for treating a bay as internal waters, under the Convention and under international law, is that, due to its geographic configuration, its waters implicate the interests of the territorial sovereign to a more intimate and important extent than do the waters beyond an open coast. [*Maine*, 469 U.S. at 519.]

The use of these waters bears this out. The waters are of little interest to the community of nations, but of great importance to local residents. As in *Maine*, there is no route of

international passage *through* the waters claimed as juridical bays. *Id.* The major ocean routes bypass Southeast Alaska. *See* Ex. AK-166. Even traffic to other Alaska ports avoids the Archipelago's intricate passages. *See* Exs. AK-166, AK-167. The waters' lack of value to non-local shipping reflects the fact that the maze of straits and sounds surrounding the Alexander Archipelago—unlike straits off open coasts—penetrate deeply inland. As a consequence, the waters' principal value is naturally felt by the coastal residents. For the vessels entering its waters, Southeast Alaska is the destination.[34] And for Southeast's communities and residents, the waters are their lifeblood. *See supra* at 2-3.

CONCLUSION

For the foregoing reasons, the Court should sustain Alaska's exceptions, grant Alaska summary judgment on Counts I, II, and IV of the Amended Complaint, and confirm the United States' disclaimer of title on Count III.

Respectfully submitted,

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[34] Even if some vessels pass through South Bay on the way to North Bay, that is consistent with bay status for both. Just as a captain in Connecticut need not sail around Long Island to reach New York Harbor, vessels bound for points only in North Bay may take the shortest route and traverse South Bay. *See Maine*, 469 U.S. at 519. The Master erred in finding otherwise. Report at 184.

APPENDIX

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Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (codified at 48 U.S.C. note prec. § 21):

* * *

Section 4—Compact With United States.

As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property, (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation * * *.

Section 5—Title to Property.

The State of Alaska and its political subdivisions, respectively, shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions. Except as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public lands.

Section 6—Selection of public lands, fish and wildlife, public schools, mineral permits, mineral grants, confirmation of grants, internal improvements, submerged lands.

* * *

(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U.S.C., sections 192-211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478; 48 U.S.C., sections 230-239 and 241-242), and June 6, 1924 (43 Stat. 465; 48 U.S.C., sections 221-228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: *Provided*, That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety legislative days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest: *Provided*, That such transfer shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. Sums of money that are available for apportionment or which the Secretary of the Interior shall have apportioned, as of the date the State of Alaska shall be deemed to be admitted into the Union, for wildlife restoration in the Territory of Alaska, pursuant to section 8 (a) of the Act of September 2, 1937,

as amended (16 U.S.C., section 669g-1), and for fish restoration and management in the Territory of Alaska, pursuant to section 12 of the Act of August 9, 1950 (16 U.S.C., section 777k), shall continue to be available for the period, and under the terms and conditions in effect at the time, the apportionments are made. Commencing with the year during which Alaska is admitted into the Union, the Secretary of the Treasury, at the close of each fiscal year, shall pay to the State of Alaska 70 per centum of the net proceeds, as determined by the Secretary of the Interior, derived during such fiscal year from all sales of sealskins or sea otter skins made in accordance with the provisions of the Act of February 26, 1944 (58 Stat. 100; 16 U.S.C., sections 631a-631q), as supplemented and amended. In arriving at the net proceeds, there shall be deducted from the receipts from all sales all costs to the United States in carrying out the provisions of the Act of February 26, 1944, as supplemented and amended, including, but not limited to, the costs of handling and dressing the skins, the costs of making the sales, and all expenses incurred in the administration of the Pribilof Islands. Nothing in this Act shall be construed as affecting the rights of the United States under the provisions of the Act of February 26, 1944, as supplemented and amended, and the Act of June 28, 1937 (50 Stat. 325), as amended (16 U.S.C., section 772 et seq.).

* * *

(m) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.

Article 7 of the Convention on the Territorial Sea and Contiguous Zone, Sept. 10, 1964, 15 U.S.T. 1606, 516 U.N.T.S. 205, T.I.A.S. No. 5639:

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

Submerged Lands Act of 1953, ch. 65, 67 Stat. 29 (codified as amended at 43 U.S.C. § 1301 et seq.):

43 U.S.C. § 1301—Definitions

When used in this subchapter and subchapter II of this chapter—

* * *

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

* * *

43 U.S.C. § 1312—Seaward Boundaries of States

The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

* * *

43 U.S.C. § 1313—Exceptions From Operation of Section 1311 of This Title

There is excepted from the operation of section 1311 of this title—

(a) * * * all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea);

28 U.S.C. § 2409a—Real Property Quiet Title Actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights.

* * *

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

Nov. 7, 1925 Letter from Assistant Treasury Secretary to Secretary of State (without enclosure) (Ex. AK-461)

Nov. 7, 1925

The Honorable

The Secretary of State.

Sir:

With reference to previous correspondence and especially to a letter, So 711.428/930, which Mr. Wright was so good as to address to this Department on September 22, 1925 concerning the seizure of the Canadian schooner MARGUERITE and the boarding of the gas screw MABEL C during July 1924, I have the honor to state that the commanding officer of the Coast Guard Cutter SMITH, who boarded the MABEL C, reports that this vessel is not of Canadian registry, but is an American owned vessel. A search of the various British maritime registers fails to show the name of any vessel called the MABEL C which corresponds with the vessel now under discussion. The list of merchant vessels of the United States however shows a MABEL C, official number 218218, hailing from Ketchikan, Alaska. It therefore appears that the British Government cannot be interested in the operations of this vessel. Under separate cover I am forwarding you the United States Coast and Geodetic Survey Chart No. 8102 on which is marked the position where the MARGUERITE was first sighted fishing in American waters and where the chase was started by the United States Coast Guard Cutter SMITH and also the position where the vessel was seized. As of passing interest the position where the MABEL C was boarded is also marked on the chart.

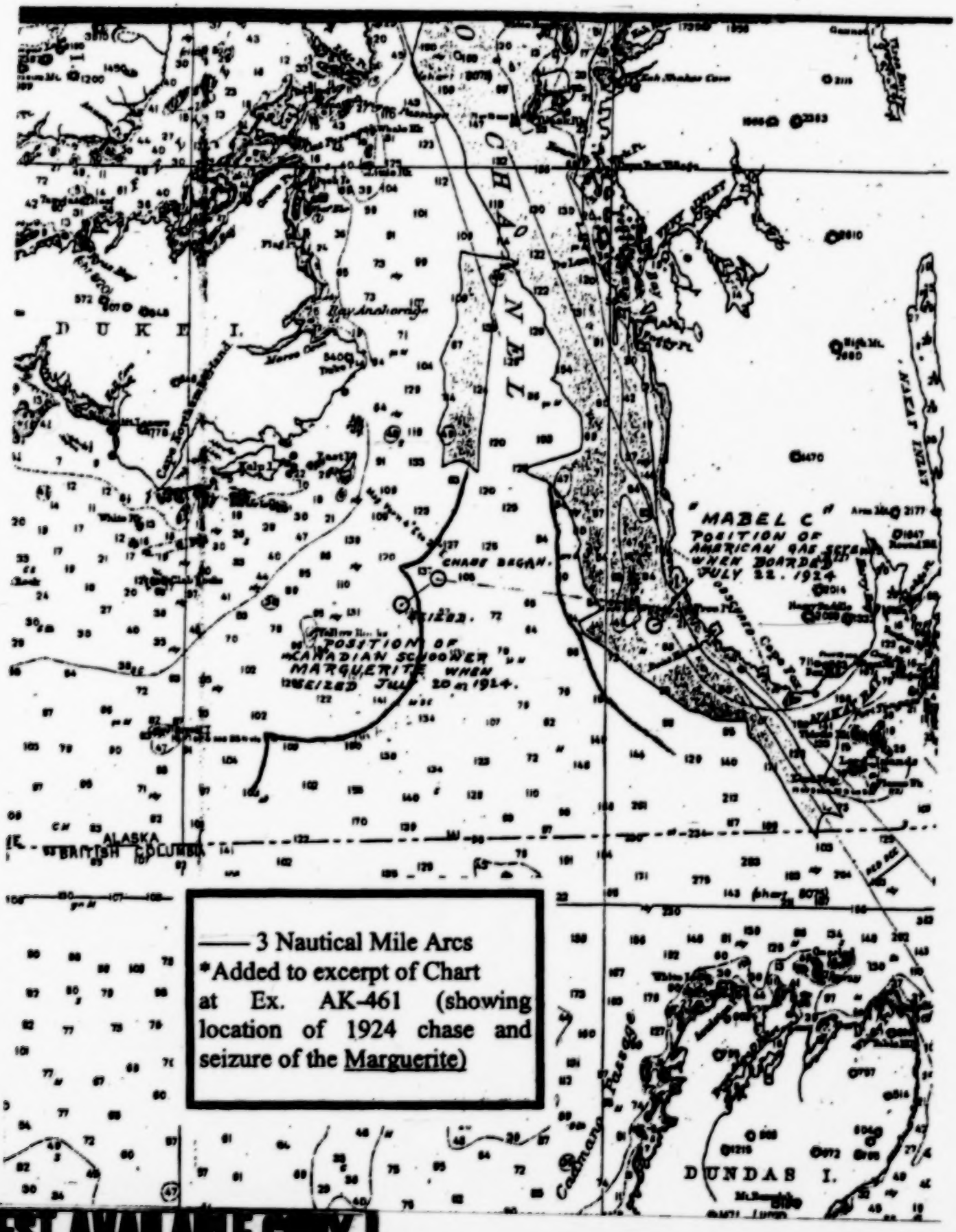
Respectfully,

/s/

L. C. Andrews,

Assistant Secretary

Oct. 27, 1925 Chart Showing Location of Interception of *Marguerite* (with three mile arcs drawn) (Ex. AK-462)



—— 3 Nautical Mile Arcs
*Added to excerpt of Chart at Ex. AK-461 (showing location of 1924 chase and seizure of the Marguerite)

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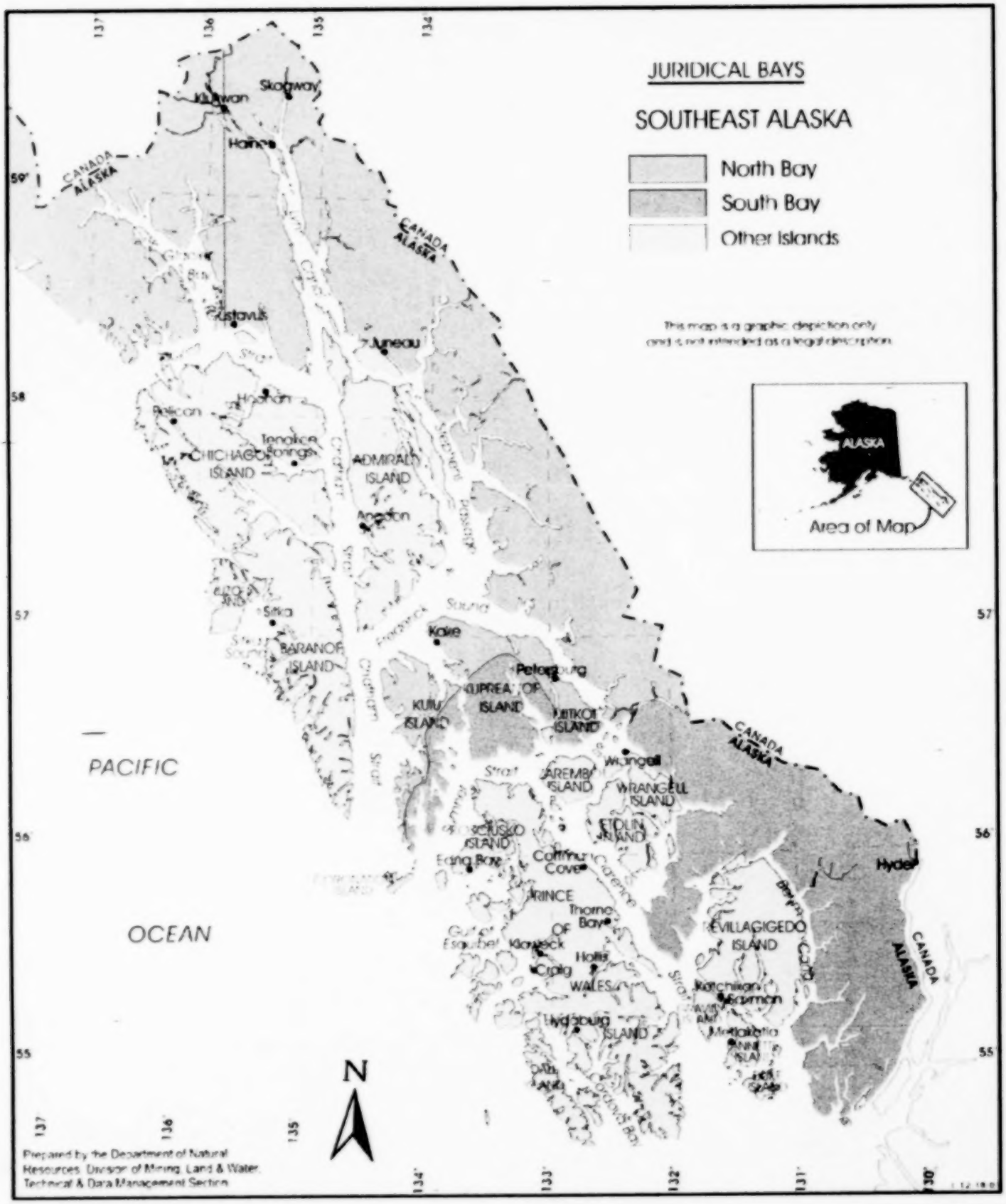
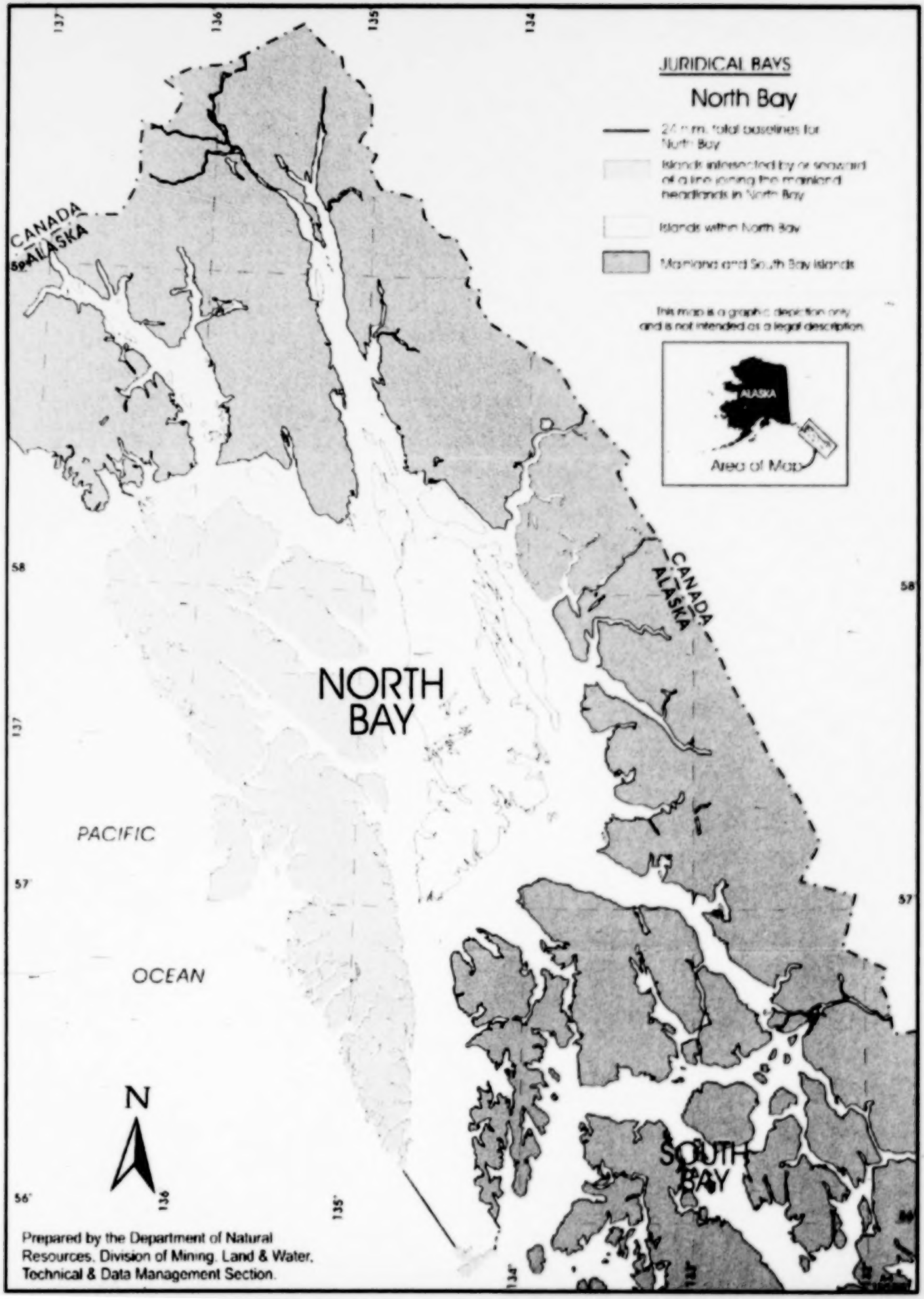
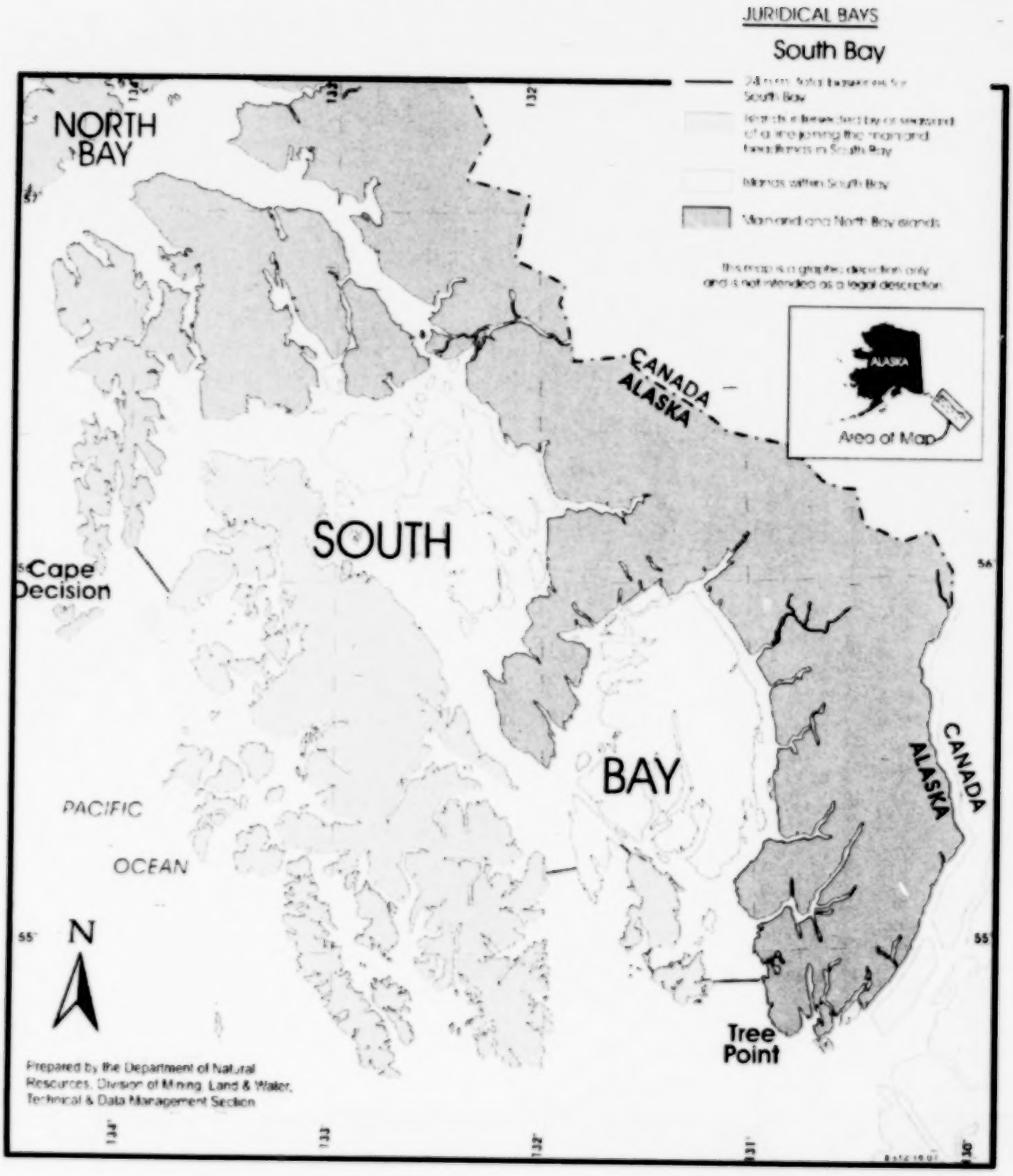
Juridical Bays—Southeast Alaska (Ex. AK-129)


JURIDICAL BAYS
SOUTHEAST ALASKA
North Bay
South Bay
Other Islands
This map is a graphic depiction only and is not intended as a legal description.
ALASKA
Area of Map
PACIFIC
OCEAN
CANADA
ALASKA
Skagway
Haines
Juneau
Petersburg
Wrangell
Hyder
Craig
Klawock
Thorne Bay
Coffman Cove
Kake
Sitka
Ketchikan
Prepared by the Department of Natural Resources, Division of Mining, Land & Water, Technical & Data Management Section

North Bay Closing Lines (Ex. AK-164)


JURIDICAL BAYS
North Bay
24 n.m. "total" baselines for North Bay
Islands intersected by or seaward of a line joining the mainland headlands in North Bay
Islands within North Bay
Mainland and South Bay Islands
This map is a graphic depiction only and is not intended as a legal description.
ALASKA
Area of Map
CANADA
ALASKA
CANADA
ALASKA
NORTH BAY
PACIFIC
OCEAN
SOUTH BAY
N
137°
136°
135°
134°
58°
57°
56°
Prepared by the Department of Natural Resources, Division of Mining, Land & Water, Technical & Data Management Section.

South Bay Closing Lines (Ex. AK-165)


JURIDICAL BAYS
South Bay
NORTH BAY
SOUTH BAY
CANADA
ALASKA
ALASKA
Area of Map
Cape Decision
PACIFIC OCEAN
N
Tree Point
CANADA
ALASKA
Prepared by the Department of Natural Resources, Division of Mining, Land & Water, Technical & Data Management Section

North Bay With Islands Removed (Ex. AK-149)

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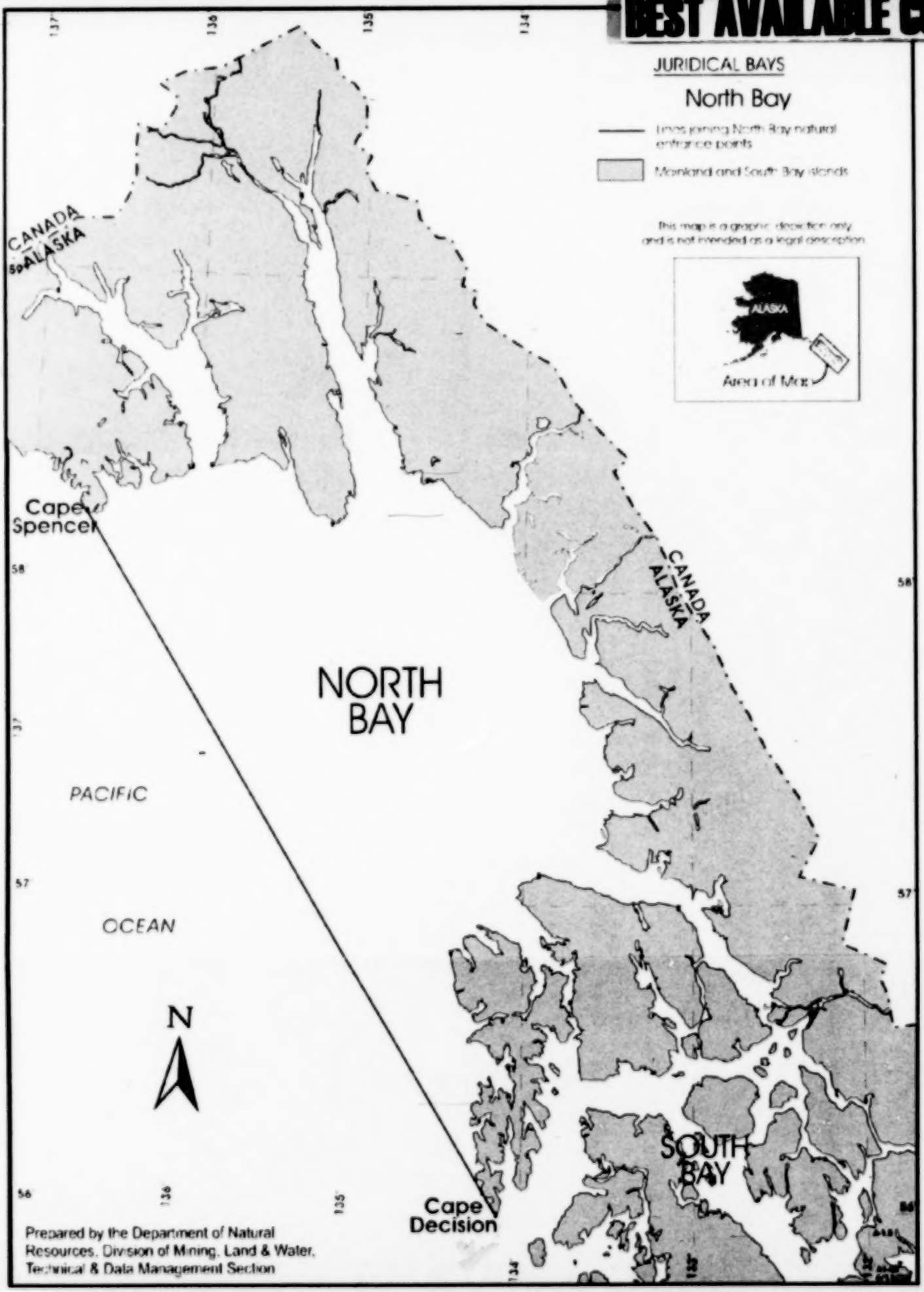
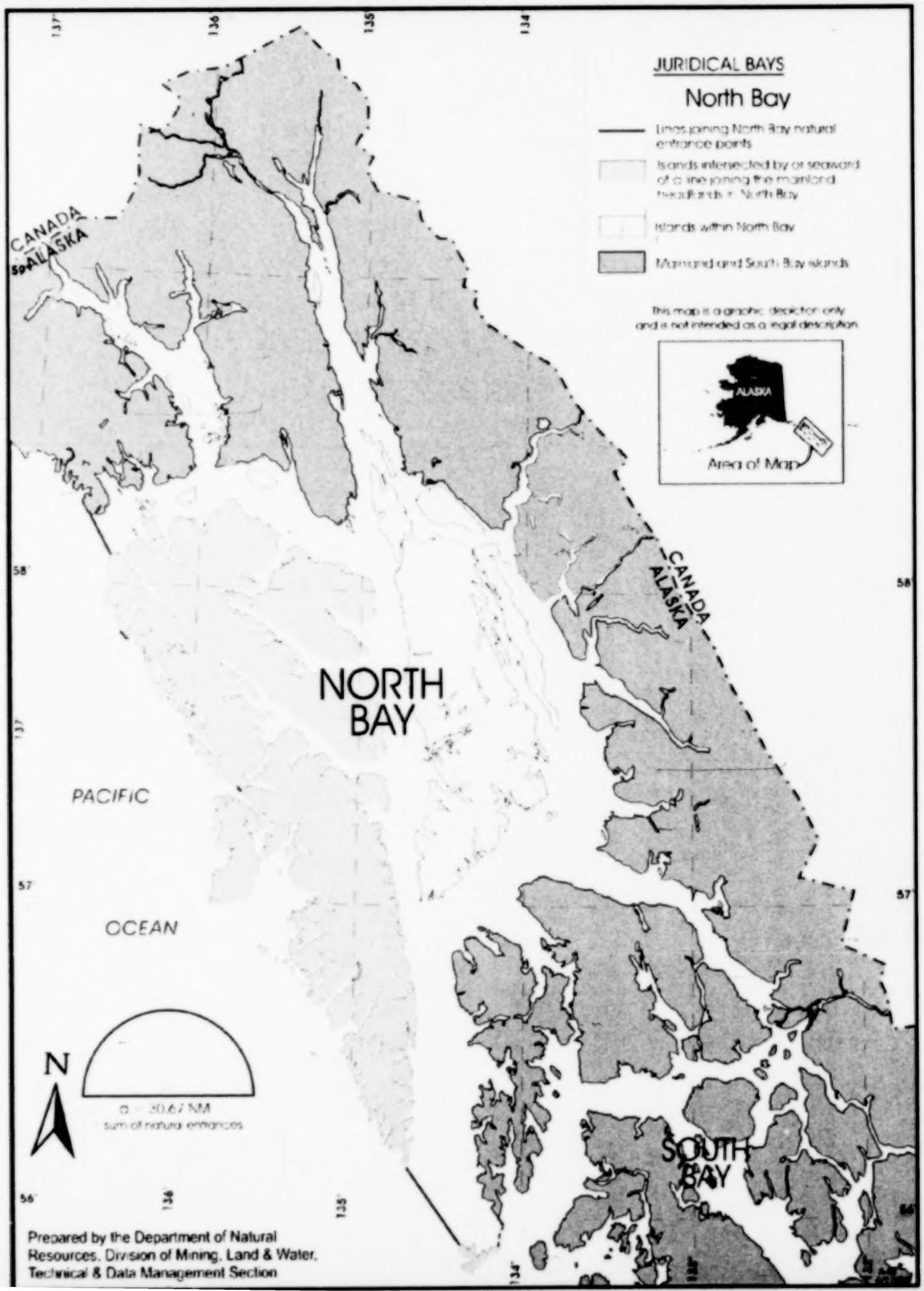
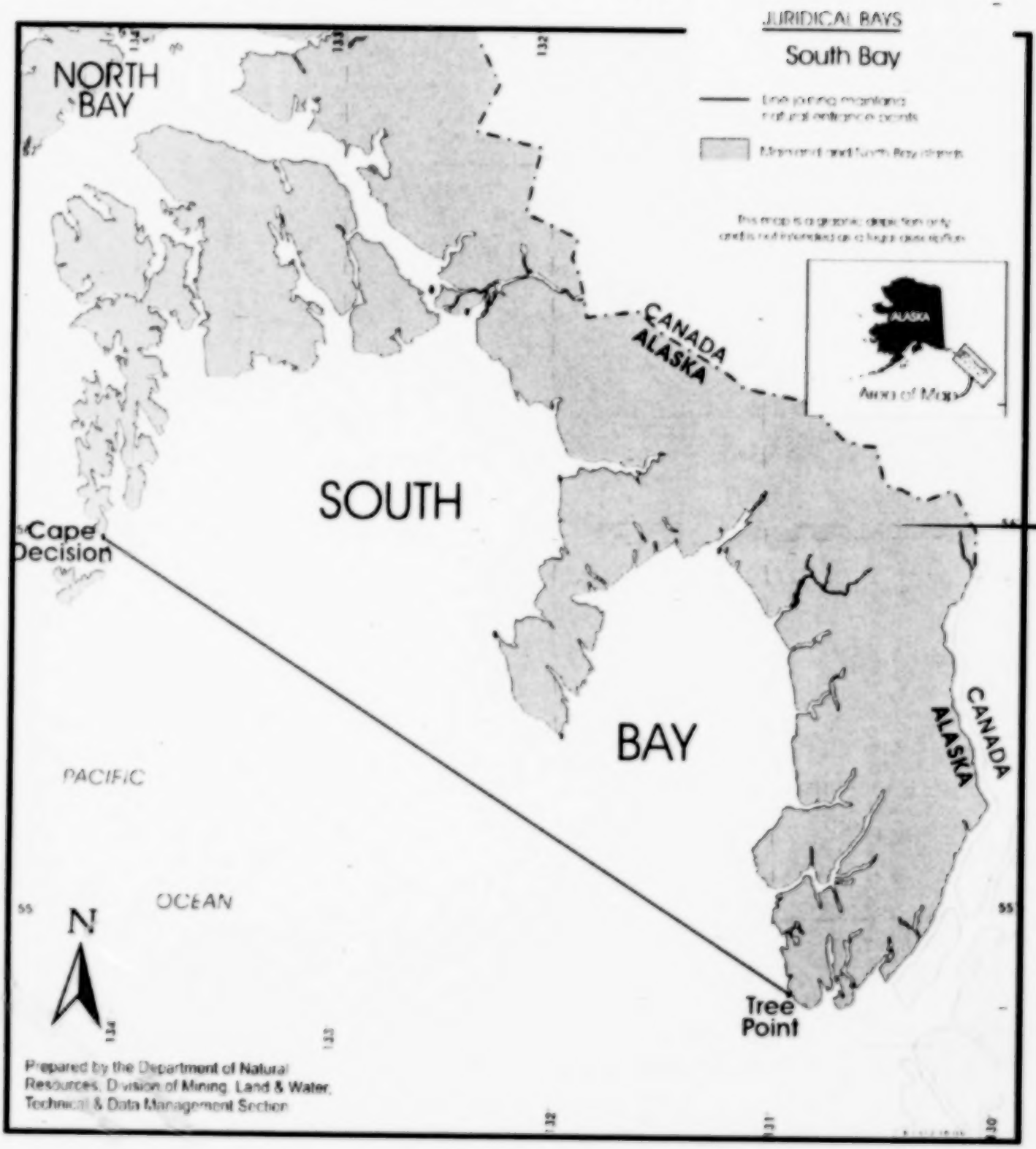


North Bay With Islands Restored (Ex. AK-152)


JURIDICAL BAYS
North Bay
Lines joining North Bay natural entrance points
Islands intersected by or seaward of a line joining the mainland headlands of North Bay
Islands within North Bay
Mainland and South Bay islands
This map is a graphic depiction only and is not intended as a legal description
ALASKA
Area of Map
CANADA
ALASKA
CANADA
ALASKA
NORTH BAY
PACIFIC
OCEAN
SOUTH BAY
N
d = 20.67 NM
sum of natural entrances
137
136
135
134
58
57
56
Prepared by the Department of Natural Resources, Division of Mining, Land & Water, Technical & Data Management Section

South Bay With Islands Removed (Ex. AK-150)


JURIDICAL BAYS
South Bay
NORTH BAY
CANADA
ALASKA
SOUTH
BAY
Cape Decision
Tree Point
PACIFIC
OCEAN
N
CANADA
ALASKA
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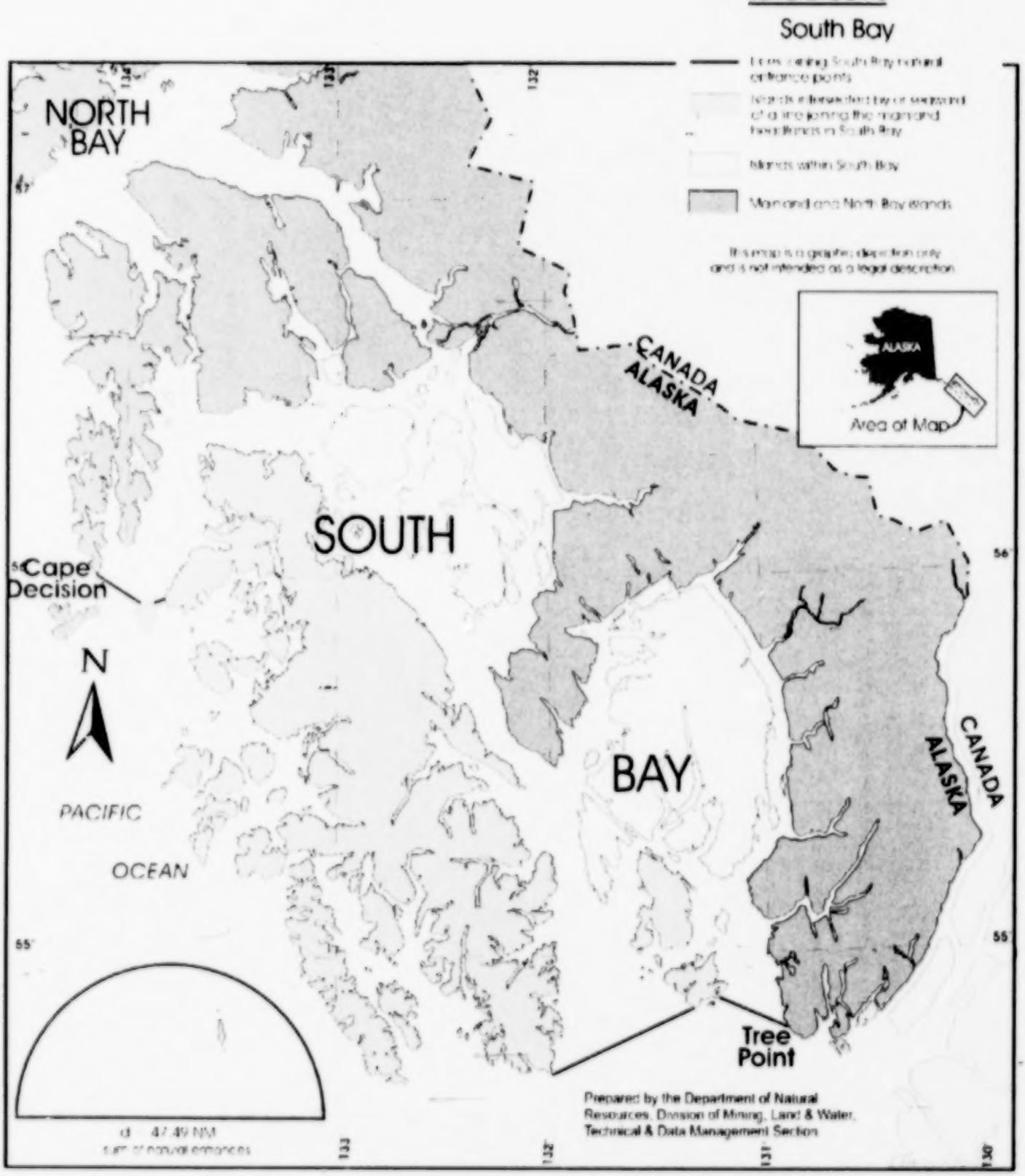
South Bay With Islands Restored (Ex. AK-153)


JURIDICAL BAYS
South Bay
Lines crossing South Bay mouth at entrance points
Islands in bay or seaward of a line joining the mainland headlands in South Bay
Islands within South Bay
Mainland and North Bay islands
This map is a graphic depiction only and is not intended as a legal description
NORTH BAY
CANADA
ALASKA
ALASKA
Area of Map
SOUTH
BAY
Cape Decision
N
PACIFIC
OCEAN
CANADA
ALASKA
Tree Point
55°
56°
55
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